



राजपत्र, हिमाचल प्रदेश

हिमाचल प्रदेश राज्य शासन द्वारा प्रकाशित

शिमला, बुधवार, 9 सितम्बर, 2009/18 भाद्रपद, 1931

हिमाचल प्रदेश सरकार

INDUSTRIES DEPARTMENT

NOTIFICATIONS

Shimla-171002, the 28th August, 2009

No. Ind.A(A)4-1/2000.—In partial modification of this department notification of even number dated:25-03-2008 regarding constitution of Board of Directors of Nahan Foundry Ltd., Nahan, the Governor, Himachal Pradesh, in exercise of powers conferred vide Section-67 of Memorandum and Articles of Association of Nahan Foundry Ltd., is pleased to nominate Shri Kishan Kapoor, Hon'ble Industries Minister, Himachal Pradesh as Chairman on the Board of Directors of Nahan Foundry Ltd. in place of Prof. Prem Kumar Dhumal, Hon'ble Chief Minister, Himachal Pradesh with immediate effect.

Shimla-171002, the 28th August, 2009

No. Ind.A(A)4-2/2003.—In partial modification of this department notification of even number dated:25-03-2008 regarding constitution of Board of Directors of H.P. State Handicrafts and Handloom Corporation Ltd., the Governor, Himachal Pradesh, in exercise of powers conferred vide Section-67 of Memorandum and Articles of Association of Himachal Pradesh State Handicrafts and Handloom Corporation Ltd., is pleased to nominate Shri Kishan Kapoor, Hon'ble Industries Minister, Himachal Pradesh as Chairman on the Board of Directors of H.P. State Handicrafts and Handloom Corporation Ltd. in place of Prof. Prem Kumar Dhumal, Hon'ble Chief Minister, Himachal Pradesh with immediate effect.

By order,
P. MITRA,
Principal Secretary.

LABOUR AND EMPLOYMENT DEPARTMENT

NOTIFICATION

Shimla-2, the 1st September, 2009

No. Sharm (A) 7-1/2005 (Award).—In exercise of the powers vested in him under section 17(1) of the Industrial Disputes Act, 1947, the Governor, Himachal Pradesh is pleased to order the publication of the following awards announced by the Presiding Officer, Labour Court, Shimla in Rajpatra, H.P. :—

Sl.No.	Case No.	Title of the Case	Date of Award
1.	127/2007	S/Shri Shiv Prasad Vs. M/s. Dharam Pal and Others	03-07-2009
2.	37/2009	Tumbi Ram Vs. XEN, HPPWD, Rampur	04-07-2009
3.	23/2008	Balbir Singh Vs. XEN, HPSEB, Rampur	06-07-2009
4.	137/2004	Pawan Kumar Vs. DFO (Wild life), Mist Chamber, Shimla-2 & Others	06-07-2009
5.	04/2006	Udam Singh Vs. XEN, HPSEB, Rajgarh	07-07-2009
6.	29/2008	Suresh Kumar Vs. H.P. Marketing Board, Khalini, Shimla-2 & Others	07-07-2009
7.	94/2006	Hari Singh Vs. DFO, Renuka Ji, Sirmour	07-07-2009
8.	30/2008	Harish Kumar Vs. Chairman, Market Committee, Solan & Others	07-07-2009
9.	52/2005	Rajender Kumar Vs. XEN, HPPWD, Rajgarh, Sirmour	07-07-2009
10.	31/2008	Geeta Ram Vs. Chairman, Market Committee, Solan & Others	07-07-2009
11.	61/2004	Raj Kumar Vs. M. D. , M/s Nirmal Spinning Mills Pvt. Ltd., Baddi, Solan.	08-07-2009
12.	33/2008	Brij Lal Vs. M. D., Ambuja Cement Ltd.	09-07-2009
13.	82/2005	Narinder Singh & Others Vs. XEN, HPSEB, Nahan, District Sirmour	09-07-2009
14.	11/2006	Ram Krishan Vs XEN, HPSEB, Rampur, Shimla	09-07-2009
15.	38/2005	Roop Singh Vs. M. D. M/s Durga Wheat Products (Pvt.) Ltd., Kala Amb, Sirmour.	10-07-2009
16.	72/2002	Amrik Singh Vs. Manager M/s Surendra Engineering Company, Nalagarh, Solan.	13-07-2009
17.	17/2007	Om Prakash Vs. The Divisional Manager, H.P. Financial Corporation, Division, Nahan.	13-07-2009
18.	84/2005	Pawan Kumar & Others Vs. XEN, HPSEB, Parwanoo, Solan	13-07-2009
19.	240/2001	Kamla Devi Vs. The Conservator of Forests, Wild Life, Division, Shimla.	13-07-2009
20.	402/2002	Sanjay Kumar Vs. BDO, Sangrah, Sirmour	13-07-2009
21.	96/2005	Sat Dev Yadav Vs. The Manager, Sunil & Company, Baddi Solan	14-07-2009
22.	97/2005	Jagdev Pal Vs. The Manager, Sunil & Company, Baddi, Solan	15-07-2009
23.	114/2007	Chajju Ram Vs. G. M. M/s Suriba Industries Nalagarh	16-06-2009
24.	80/2005	Tulsi Ram Vs. The Director of Industries, H. P. & Others	16-07-2009
25.	96/2006	Jai Ram Vs. DFO, Shimla	17-07-2009

26.	127/2004	Mansa Ram Vs. SDO, HPSEB(E), Sub-Division, Goyala, Kasauli, Solan	20-07-2009
27.	48/2007	Babu Ram Vs. XEN, HPSEB, Rajgarh, Sirmour	20-07-2009
28.	359/2002	Mahant Ram Vs. BDO, Nahan, Sirmour	21-07-2009
29.	79/2006	Sita Ram Vs. Sr. XEN(E), HPSEB, Poanta Sahib, District Sirmour, H.P.	23-07-2009
30.	64/2008	Vir Dutt Vs. XEN, I & PH Division, Nahan	23-07-2009
31.	137/2002	Amar Chand Vs XEN, HPSEB, Division, Saproon, Solan	27-07-2009
32.	88/2006	Hari Singh Vs. Divisional Manager, HRTC, Hamirpur & Others	27-07-2009
33.	142/2006	Sant Ram Vs. XEN, HPPWD, Division No. 1, Shimla	27-07-2009
34.	126/2006	Mahesh Kumar Vs. DFO(Wild Life), Khalini, Shimla-2	29-07-2009
35.	24/2007	Bishamber Singh Vs. A.E. (B&R) Sub-Division, HPPWD, Rohru, Shimla & Others.	29-07-2009
36.	32/2007	Kabul Singh Vs. XEN, IPH, Nalagarh, Solan	29-07-2009
37.	109/2007	Hari Singh Vs. M. D. M/s Him Techoo Forge Ltd., Baddi, Solan	29-07-2009
38.	78/2002	M. C. Guleria Vs. M/s Ushan Telehoist Ltd., Chandigarh	30-07-2009
39.	89/2001	Kamal Kumar s/o Sansar Singh, r/o Village Bankala, P. O. Shambuwalla, Tehsil Nahan, District Sirmour (H. P.)	9-07-2009

By order,
Sd/-
ACS (Lab. & EMP.).

**IN THE COURT OF JAGMOHAN SINGH MAHANTAN, PRESIDING JUDGE, INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Ref. 127/2007
3.7.2009

Sh Shiv Prasad

V/s

M/s Dharam Pal , Prem Chand & Others

Present:-None for the petitioner.

Shri Rahul Mahajan, , Ld. csl for respondent.

It is 4.15 P.M. Case is called in the pre and post lunch sessions but none appeared on behalf of the parties. It seems that the petitioner is not interested to pursue his case. I am also satisfied that the petitioner has properly served. Accordingly, the claim of the petitioner is dismissed in default and the reference is ordered to be answered accordingly. Let a copy of this order be sent to the appropriate government for publication in official gazette. File , after completion, be consigned to records.

Announced.
3.7.2009

By order,
Sd/-
Presiding Judge.

**IN THE COURT OF JAGMOHAN SINGH MAHANTAN, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT, SHIMLA**

Ref. 37/2009
4.7.2009

Sh Tumbi Ram

V/s

Ex. Engg. HPPWD, Rampur

Present:-None for the petitioner.

Shri Jagdish Kanwar, Ld. DDA for respondent.

It is 3:35 P.M. Cases is called in the pre and post lunch sessions but none appeared on behalf of the petitioner. It seems that the petitioner is not interested to persue his case. I am also satisfied that the petitioner has been properly served. Accordingly, the claim of the petitioner is dismissed in default and the reference is ordered to be answered accordingly. Let a copy of this order be sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced.

4.7.2009

By order,
Sd/-
Presiding Judge.

**IN THE COURT OF JAGMOHAN SINGH MAHANTAN, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT, SHIMLA**

Ref No. 23 of 2008.
Instituted on. 22.4.2008
Decided on. 6.7.2009.

HP. Balbir Singh S/o Shri Gulzar Singh R/o Village Badhal, P.O Jeori, Tehsil Rampur Bushahr, District Shimla,
...Petitioner.

Vs.

The Executive Engineer, HPSEB, Rampur Division Rampur Bushahr, District Shimla, HP.

. . Respondent.

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner : Ms. Rita Thakur, Ld. Csl.
For respondent : Shri Cnahdan Goel, Ld. Csl.

AWARD

1. The following reference has been received from appropriate government by this court for adjudication:

“Whether the termination of services of Shri Balbir singh S/o Shri Gulzar Singh by the Executive Engineer, HPSEB Rampur Division, Rampur Bushahr, District Shimla, HP w.e.f. 25.5.1999 vide order dated 21.4.1999 without complying the provisions of Industrial disputes Act, 1947 whereas junior to him are retained as alleged by the workman is legal and justified? If not, what relief of service benefits including back wages and seniority, the aggrieved workman is entitled to?”

2. The petitioner has filed a statement of claim asserting therein that he was engaged as beldar on muster roll basis on daily wages in Electrical Sub Division, HPSEB, Sarhan w.e.f. 25.9.1995 and continued as such till 24.5.1999 and that the petitioner has worked continuously without any break and has completed 240 days in each calendar year whose services were terminated on 25.5.1999 without following the provisions of Industrial Disputes Act, 1947 and no notice under section 25F of the Industrial disputes Act was served upon him and even no compensation was paid to him whereas the respondent served a notice under clause 14 (2) (1) and clause 23 (1) & (3) of the standing orders which are not in force and has been withdrawn by the Board and that the services of the petitioner have been retrenched without following the provisions of Industrial Disputes Act, 1947 and even junior persons S/Shri Lachmi Dass and Nihal Singh are still continuing on work which is violation of the principle of first come last go and that the petitioner is a poor man and has been thrown out of the job by the respondent illegally which is totally arbitrary, discriminatory and contrary to the provisions of law and as such prayed for reinstatement with seniority, continuity and regularization alongwith back wages, hence this claim.

3. The respondent resisted and contested the claim of the petitioner, which filed reply interalia raising preliminary objections of non joinder of necessary party, the petitioner has no enforceable cause of action against the respondent, estoppel and barred by time. On merits, it is contended that the petitioner was engaged on muster roll as daily waged beldar w.e.f. 25.9.1995, who worked upto 24.4.1999 with certain breaks and that the petitioner has not completed uninterrupted service continuously for 240 days in any calendar year, who was engaged against the specific work and after completion of work, the services of the petitioner could not be utilized by the respondent as there was no work available with the respondent and as such the services of the petitioner were retrenched by serving him notice as per rule and there is no specific form for giving notice under section 25F of the Industrial Disputes Act and that no junior person to the petitioner was engaged by the respondent except those whose services were reinstated by the Court and no pick and choose policy was adopted by the respondent and as such prayed for the dismissal of the claim.

4. No rejoinder filed. The following issues were framed by this court on 21.11.2008 on the pleadings of the parties.

1. Whether termination of services of Shri Balbir Singh petitioner by the Executive engineer, HPSEB, Rampur, Division Rampur Bushahr w.e.f. 25.5.1999 vide orders dated 21.4.1999 without complying with the provisions of ID Act, 1947 and having retained his juniors is illegal and unjustified as alleged? ...OPP.
2. If issue no.1 is proved, to what relief of service benefits including back wages and seniority the petitioner is entitled to?
 1. Whether the claim is not maintainable? ...OPP.
 2. Whether the petitioner is estopped for filing this petition by his act and ...OPP.
 3. Whether the claim is patently time barred? ...OPP.
 4. Relief.

5. I have heard the Ld. Counsels for the parties and have gone through the record of the case.

6. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings on the aforesaid issues are as under:

Issue No. 1	: Yes.
Issue No. 2	: Entitled for reinstatement in service with seniority and continuity but without back wages.
Issue No. 3	: No.
Issue No. 4	: No.
Issue No. 5	: No.
Relief.	Reference answered In affirmative per operative part of award.

REASONS FOR FINDINGS

Issue No. 1.

7. Coming to this issue, the petitioner has examined two PWs in all. Petitioner Shri Balbir Singh appeared into witness box as PW-1, who has stated that he was engaged as beldar on daily wages on muster roll of HPSEB Sub Division, Sarhan on 25.9.1995 and continued as such till 24.4.1999, who worked for more than 240 working days in every calendar year preceding his termination, who was terminated on 24.5.1999 through notice. No compensation was paid to him at the time of termination and proved the mandays chart Ex. PA and as such prayed for reinstatement in service alongwith all consequential benefits including back wages. His juniors S/Shri Laxmi Dass and Nihal Singh are still working with the respondent.

8. PW-2 Er. Pardeep Kumar Negi has stated that he is posted as Junior Engineer, HPSEB Jeori since June, 2006 and is well conversant with the facts of the case. The petitioner was engaged as beldar on daily wages on 25.9.1995, who continued as such till 25.5.1999 with breaks and then the services of the petitioner were terminated by giving him a notice Ex. RA and Shri Nihal Singh was engaged on 25.9.1996 as beldar and Shri Lachmi Dass was engaged as beldar on 25.7.1996, who are still working with the respondent and proved the service particulars of Lachmi Dass and Nihal Singh Ex. RB, who were taken into service by the order of the HP Administrative Tribunal and also proved the mandays chart of the petitioner Ex. PA.

9. To rebut the case of the petitioner, the respondent has examined RW-1 Er. Pyar Singh, who has stated that he is posted as Junior Engineer with the respondent since 31.12.2005 and is well conversant with the facts of the case.

The petitioner was engaged as beldar on daily wages on 25.9.1995 for laying electricity line, who continued as such till 24.5.1999, the mandays chart of the petitioner is Ex. PA and the services of the petitioner were terminated vide notice Ex. RA as there was no work available with the respondent.

10. Ms. Rita Thakur, Ld. counsel for the petitioner has vehemently argued at the very outset that the services of the petitioner were illegally terminated by the respondent by serving a notice under the provisions of standing orders which were not in vogue. The petitioner has completed 240 working days in twelve calendar months preceding his termination but no notice nor compensation under section 25F of the Industrial Disputes Act, 1947 was paid to the petitioner at the time of his termination and as such his case squarely falls under section 25F of the Industrial Disputes Act, 1947, hence the petitioner is liable to be reinstated in service with all consequential benefits.

11. On the contrary, Shri Chandan Goel, Ld. Counsel for respondent controverted the arguments of Ms. Thakur and has submitted that the petitioner was engaged against specific period for specific work, who was rightly terminated after giving a notice under standing orders of HPSEB as there was no work available with the respondent and as such the claim of the petitioner is liable to be dismissed.

12. I have considered the respective contentions of both the parties and have scrutinized the record of the case.

13. After the close scrutiny of the record of the case, there is no dispute about the engagement as well as termination of the petitioner, who was engaged on 25.9.1995 as daily rated beldar and terminated on 24.5.1999 by the respondent by serving a notice under standing orders of HPSEB. It is also clear that the petitioner has worked with the respondent board for 347 days in twelve calendar months preceding his termination. Apart from it, the petitioner has proved on record that no notice nor compensation under section 25F of the Industrial Disputes Act, 1947 was paid to him at the time of his termination. No doubt, that the respondent has tried to establish on record that the services of the petitioner were terminated after serving a notice under the provisions of standing orders of HPSEB as the petitioner was engaged for specific work and for specific period but the respondent has failed to prove on record that the petitioner was initially engaged for specific period for specific work as the petitioner has completed 240 working days in many years as is evident from the mandays chart Ex. PA placed on record.

14. Now, turning to the legal aspect of the case, no doubt that the respondents has given a notice to the petitioner under clause 14 (2) (1) and clause 23 (1) and (3) of the standing orders framed and notified by the HPSEB Ex. RA placed on record but it is well settled by our own Hon'ble High Court in CWP No. 1383 of 05 dated 18th May, 2007 incase titled as Executive Engineer, HPSEB Joginder Nagar Vs. Sanju & Presiding officer Labour Court-cum-Industrial Tribunal Dharamshala. In which it was held that:—

“In this view of the matter, the Tribunal wrongly relied upon the provisions of the Standing Orders Act to hold that the disengagement is bad for want of issuance of notice giving ten clear days to the employees. Admittedly, the employees had not completed 240 days and the Tribunal could not have come to the rescue of the employee.”

15. Thus, having regard to the above cited ruling and in view of the entire evidence on record, it can safely be concluded that the petitioner has completed more than 240 working days in twelve calendar months preceding his termination, who was terminated from service without any notice and without any compensation under section 25F of the Industrial disputes Act, 1947 and obviously therefore, the case of the petitioner squarely falls under section 25F of the Industrial disputes Act, 1947 and the termination of the petitioner w.e.f. 25.5.1999 without complying with the provisions of Industrial disputes Act, 1947 is held illegal and unjustified. Accordingly, issue no.1 is decided in favour of petitioner and against the respondent.

Issue No. 2.

16. Since I have held under issue no. 1 above, the services of petitioner have been illegally terminated by the respondent without complying with the provisions of Industrial disputes Act, 1947, hence the petitioner is held entitled for reinstatement in service alongwith seniority and continuity and the termination order dated 21.4.1999 is hereby quashed. However, the petitioner is not entitled for back wages as he has not placed any material on record to substantiate that he was not gainfully employed after his termination. Accordingly, issue no.2 is decided in favour of the petitioner and against the respondent.

Issue No. 3.

17. In support of this issue, no evidence was led by the respondents nor it was pressed during the course of arguments. However, I find nothing wrong with this claim which is perfectly maintainable. Accordingly, issue no.3 is decided in favour of the petitioner and against the respondent.

Issue No. 4.

18. In support of this issue no evidence was led by the respondent. Since the respondent has failed to lead evidence on the point of estoppel, hence it can safely be concluded that the petitioner is not estopped from filing this petition by his act and conduct. Accordingly, this issue is decided in favour of petitioner and against the respondent.

Issue No. 5.

19. In support of this issue, no evidence was led by the respondents. However I have scrutinized the record of the case and observed that there is no limitation under the Industrial Disputes Act, 1947 as it was held by their lordship of Hon'ble Supreme Court reported in (1999) 6 SCC 82 case titled as Ajayab singh Vs. Sirhind Co-operative Marketing-cum- processing Service Society Limited and Another. In which it was held that:-

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”

Accordingly, on the strength of this ruling, it can safely be concluded that there is no limitation under the Industrial Disputes Act, 1947 and as such issue is decided in negative.

RELIEF

As a sequel to my above discussion and findings on Issue no.1 to 5, the claim of the petitioner succeeds and is hereby allowed and the petitioner is ordered to be reinstated in service with seniority and continuity as a result of which the termination order dated 21.4.1999 is quashed and set aside. However, the petitioner is not entitled to back wages as he has not placed any material on record to substantiate that he was not gainfully employed after his termination and as such the reference is ordered to be answered in affirmative. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced in the open court today on this Day of 6th July of 2009 in the presence of parties counsels.

By order,
JAGMOHAN SINGH MAHANTAN,
Presiding Judge.

IN THE COURT OF JAGMOHAN SINGH MAHANTAN, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA

Ref No. 137 of 2004.
Instituted on. 6.12.2004
Decided on. 6.7.2009.

Pawan Kumar s/o Shri Roop Lal r/o House no.39, Bharari Shimla,HP.

...Petitioner

Vs.

1. The Divisional Forest Officer (wild Life) Mist Chamber, Khalini Shimla-2.
2. The Range Officer (Wild Life) Project, Mist Chamber, Khalini Shimla-2.

...Respondents.

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner : Sh. Vipul Prabhakar, Ld. Csl.
For respondent : Sh. Jagdish Kanwar, Ld. DDA.

AWARD

1. The following reference has been received from appropriate government by this court for adjudication :

“Whether the termination of the services of Shri Pawan Kumar S/o Shri Roop Lal ex daily wages worker by the Divisonal Forest Officer, (Wild Life) Mist Chamber, Khalini, Shimla 171002. 2. The

Range Officer (Wild Life) Project, Mist Chamber, Khalini, Shimla-2 w.e.f. 31.3.2000 without complying with the provisions of Industrial disputes Act, 1947 and whereas juniors to him are reengaged/retained by the department as alleged by the workman is proper and justified? If not, what relief of service benefits Shri Pawan Kumar workman is entitled to?"

2. The petitioner has filed a statement of claim asserting therein that he was initially engaged as daily wages mate by respondent in Jan. 1995 in the wild Life Project and the petitioner was discharging his duties with utmost sincerity and devotion and there was no complaint against him and that the petitioner remained in the continuous service without any break under respondents till 31.3.2002 and that the petitioner had completed more than 240 days in a calendar year and as such it is mandatory required under section 25F of the Industrial Disputes Act, 1947 to give notice to the petitioner prior to his retrenchment but the respondent department orally terminated the services of the petitioner and that large number of employees were engaged after the retrenchment of the petitioner in the various projects and many of them are still working and some of the persons, who were reengaged by the respondent by the orders of the Court are still working with them and that there is sufficient work available with the respondents as new projects are being opened and old ones are still continuing and fresh hands are being appointed and as such prayed for reinstatement with seniority and back wages, hence this claim.

3. The respondent resisted and contested the claim of the petitioner, which filed reply interalia contending that the petitioner was engaged on daily wages basis as labourer w.e.f. November, 1995 to do forestry works in foreign aided project called ECO Project where the petitioner worked till March, 2000 and that the project had come to an end in March, 2000 and the workers who were deployed on a project on temporary basis have to go with the closure of the project. It is denied that the large numbers of daily waged employees were engaged after the petitioner by the respondent in various projects. It is admitted that some of the persons were reinstated by the orders of the Administrative Tribunal and the respondents have filed review petition before the Administrative Tribunal which is still pending for adjudication. It is also denied that sufficient work is available with the respondent. The NORAD Project has already come to an end in March, 2000 and no fresh hands are being appointed and as such prayed for the dismissal of the claim

4. In the rejoinder, the petitioner contervorted the assertions made in the reply and reiterated and reaffirmed the averments of the petition.

5. The following issues were framed by this court on 30.5.2006 on the pleadings of the parties.

1. Whether the services of the petitioner have been illegally terminated by the respondent without complying the provisions of Industrial Disputes Act, 1947? If so, its effect? ...OPP.
2. If issue no.1 is proved in affirmative, to what relief, the petitioner is entitled to? ...OPP.
3. Whether the petition is barred by limitation? ...OPP.
4. Whether the petition in the present form is not maintainable? ...OPP.
5. Whether the petitioner has concealed the material facts from the Court? If so, its effect? ...OPP.
6. Relief.

6. I have heard the Ld. Counsel for petitioner and Ld. DDA for respondent and have gone through the record of the case.

7. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings on the aforesaid issues are as under:

Issue No. 1	No.
Issue No. 2	Not entitled to any relief.
Issue No.	No.
Issue No. 4	No.
Relief.	Reference answered In negative per operative part of award.

REASONS FOR FINDINGS

Issue No.1.

8. Coming to this issue, the petitioner has examined himself as PW-1, who has stated that he was engaged as mate by the respondent since Jan. 1995 to 2000 and the mandays chart filed by DFO in the Tribunal is Ex. PA. No

notice nor compensation has been paid to him when his services were orally terminated, who approached the Administrative Tribunal where the petition was dismissed, who was directed to approach this Court for redressal and about 7-8 people, who were working with him are terminated but all these workers are taken back as per order of the Administrative Tribunal, the copies of which are Ex. PB to PH. He does not know whether any person has been engaged or not and prayed for reinstatement with back wages.

9. To rebut the case of the petitioner, the respondent has examined RW-1 Shri Raj Kumar Singh, who has stated that he is posted as DFO Mid Hill Project at Rampur since 2004 and he is well conversant with the facts of the case. He was posted as R.O Wild Life Mist Chamber, Khalini in 1998, who was also looking after ECO Project Unit -1 NORAD, Shimla which was Norway aided project which came to an end in March, 2000. The petitioner was engaged as beldar on daily wages in 1995 and worked till March, 2000 with ECO Project NORAD which was foreign aided project. The petitioner filed a petition before the Administrative Tribunal which was withdrawn by the petitioner and on the completion of the project, the service of the petitioner was disengaged and thereafter no funds were received by the department for this project. The petitioner was engaged with the condition that he would remain in service till the fund is available with the department under this project and no fresh appointment was made by the department after the completion of the project.

10. The case of the petitioner is that he being the daily wages beldar having completed 240 working days in each calendar year and also twelve calendar months preceding his termination, who was illegally terminated from service without any reason and no notice nor compensation was paid to him at the time of his removal and as such he is entitled for reinstatement with all consequential benefits.

11. On the contrary, the respondent contends that the petitioner was engaged as daily wages labourer for seasonal work and for specified period, who was engaged according to the need of work and funds, hence the petitioner is not entitled to any relief as claimed by him.

12. I have considered the respective contentions of both the parties and have scrutinized the record of the case.

13. After the close scrutiny of the record of the case, it remains a fact that the petitioner was engaged by the respondent as daily wages beldar, who worked with the respondent w.e.f. 1995 to 2000 under NORAD Project which was foreign aided project and the petitioner remained with this project till its completion in the year 2000 which fact has not been disputed. It is also clear that the work of the NORAD Project was subject to the availability of work and funds and after 2000, no funds were received by the respondent department under this project, hence they have disengaged all the workmen who were engaged in this project and as such it is clear that the engagement of the petitioner was purely on the basis of need of work and after the completion of NORAD Project, the services of the petitioner stood automatically dispensed with. Moreover, it is well settled in (2006) 6 SCC 221, case titled as Reserve Bank of India V. Gopinath Sharma & Anr. In which it was held that :-

“Workman not appointed to any regular post but engaged on the basis of need of work on day to day basis, held, had no right to the post.”

14. Similarly in 2006 (2) SCC 794 in case titled as Haryana State Agricultural Marketing Board V. Subhash Chand & Anr. In which it was held that:-

“If nature of service does not come within purview of definition of retrenchment in section 2(oo), question of applicability of section 25-G does not arise. Bare perusal of offer of appointment (set out in para 2 herein) clearly shows that respondent was appointed on seasonal contracts. Hence, respondent not having been reengaged on expiry thereof, he was not retrenched within meaning of section 2(oo), and his case fell exception in section 2(oo)(bb). Hence, section 25-G was inapplicable in his case and dispensing with engagement of respondent cannot be said to be unwarranted in law.”

15. Apart from it, it was further held in case titled as Punjab State Electricity Board V. Darbara Singh reported in 2006 LLR 68 SC. and in case titled as Municipal Council Samrala V. Surhwinder Kaur reported in 2006 LLR 1009 SC. In which it was held that:-

“Material on record established that engagement of workman was for specific period and as such his termination will be excluded as per the provisions of section 2(oo)(bb) of the I.D Act and hence, no retrenchment compensation will be payable on his termination even when he has worked for more than 240 days in the preceding 12 calendar months.”

16. Now, turning to the other aspect of the case, the petitioner tried to establish on record that his juniors are still continuing with the respondent department but he did not prove on record that on which date they joined the department and infact they are juniors to the petitioner. On the other hand, the respondent has proved on record that the petitioner was engaged as daily wages labourer on the NORAD Project which was foreign aided project and as such it does not lie in the mouth of petitioner to claim any right over the post which was offered to him for specific period and for specific work and even the above named workmen S/Shri Dhuni Chand, Girdhari, Mahinder Kumar, Jeet Ram and ishwar Dass were engaged by the order of the Administrative Tribunal HP and the review petition has been filed by the respondent to remove them which is still pending for adjudication before the Hon'ble High Court but it cannot be said that they were engaged by the respondent and are still continuing with the respondent department and obviously therefore, the case of petitioner cannot be accepted for his reinstatement as no junior to the petitioner is working with the respondent is proved on record especially when the NORAD Project has been closed for want of funds by the Norway to the respondents.

17. Thus, on the strength of the above cited rulings and having regard to the entire evidence on record, it can safely be concluded that the services of the petitioner has not been illegally terminated by the respondent without any notice or compensation which is legal and justified and rather the petitioner was engaged as casual labourer for specific period on foreign aided project and after its completion, the services of the petitioner automatically came to an end. Accordingly, this issue is decided in favour of the respondent and against the petitioner.

Issue No. 2.

18. Since, I have held under issue no.1 above, that the services of the petitioner has been legally dispensed with by the respondent without notice or compensation, hence the petitioner is not entitled to any service benefits. Accordingly, issue no.2 is answered in negative.

Issue No. 3.

19. In support of this issue, no evidence was led by the respondents. However I find nothing wrong with this petition which is perfectly maintainable in the present form. Accordingly, this issue is decided in negative.

Issue No. 4.

20. In support to this issue, no evidence was led by the respondent nor it was pressed during the course of arguments. However there is nothing on record which could show that the petitioner has concealed the material facts from the Court. Accordingly, issue no. 4 is decided in favour of petitioner and against the respondent.

RELIEF

As a sequel to my above discussion and findings on issues no.1 to 4, the claim of the petitioner fails and is hereby dismissed and the reference is ordered to be answered in negative. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced in the open court today on this day of 6th July, 2009 in the presence of parties counsels.

By order,
JAGMOHAN SINGH MAHANTAN
Presiding Judge.

**IN THE COURT OF JAGMOHAN SINGH MAHANTAN, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT, SHIMLA**

Ref.4/2006
7.7.2009

Sh Udham Singh

V/s

Ex. Engg. HPSEB, Rajgarh, Distt Sirmour.

Present:-None for the petitioner.

Mr. Sharmila patial, Ld Csl for respondent.

It is 3.55 P.M. Case is called in the pre and post lunch sessions but none appeared on behalf of the petitioner. It seems that the petitioner is not interested to persue his case. I am also satisfied that the petitioner has properly served. Accordingly, the claim of the petitioner is dismissed in default and the reference is ordered to be answered accordingly. Let a copy of this order be sent to the appropriate government for publication in official gazette. File , after completion, be consigned to records.

Announced.

7.7.2009.

By order,
Sd/-
Presiding Judge.

**IN THE COURT OF JAGMOHAN SINGH MAHANTAN, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT, SHIMLA, HP**

Ref No. 29 of 2008.
Instituted on 6.6.2008.
Decided on. 7.7.2009.

Suresh Kumar S/o Shri Ratti Ram R/o Village Rano, P.O Deothi, Tehsil & District Solan, HP. . . *Petitioner.*

Vs.

1. Himachal Pradesh Marketing Board, Vipnan Bhawan, Khalini Shimla-2
2. The Chairman Market committee, Solan, H.P.
3. The Secretary, Market Committee, Solan H.P.

. . . *Respondents.*

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner : Shri J. C Bhardwaj, Ld. AR.

For respondent : Already exparte.

AWARD

1. The following reference has been received from appropriate government by this Court for adjudication:-

“Whether the termination of services of Shri Suresh Kumar S/o Shri Rati Ram workman by the (1) Chairman Market Committee, Solan, HP (2) Secretary, Market committee, Solan, HP w.e.f. 1.12.2003 without complying the provisions of the Industrial disputes Act, 1947 whereas junior to him are retained by the employer as alleged by the workman is proper and justified? If not, what relief of service benefits and amount of compensation, the aggrieved workman is entitled?”

2. The petitioner has filed a claim asserting therein that he was appointed as mortar mate w.e.f. 6.12.1999 by respondent no.1 vide memorandum dated 6.12.1999 on contractual basis for a period of six months, who worked for 240 days in a calendar year with respondents, who was illegally terminated from service by respondent no.2 & 3 without any authority vide order dated 22.9.2003. The petitioner was appointed by respondent no.1 and the respondent no.2 has no powers to terminate the services of the petitioner which is unfair labour practice and that five persons were working in the office of respondent no.1 as per order dated 16.10.2003 and only the services of the petitioner were terminated and junior to him S/Shri Munish Kumar and Kulwant Singh are still working with respondent no.1 and that five home guards have also been recruited by the respondents no.2 & 3 at the wages of Rs. 3000/- per month who are juniors to the petitioner and that the petitioner was employed as mortar mate by respondent no.1 but the work of supervisor was being taken from the petitioner and that the services of the petitioner were continuous for the purpose of section 25B of the Industrial Disputes Act, 1947 as the petitioner has completed 240 days in each calendar year preceding his termination and that the petitioner is unemployed since the date of his illegal termination and that the right of livelihood, its continuity, better and healthy working conditions are the recognized basic rights which cannot be infringed in an arbitrary manner and that the petitioner has filed an OA before the Administrative Tribunal which was dismissed on the ground of jurisdiction and as such prayed for reinstatement with retrospective effect with full back wages alongwith interest @ 18%, seniority and other consequential service benefits , hence this claim.

3. The respondents were properly served through RAD but not put in appearance for 12.9.2008, hence proceeded against exparte.

4. The petitioner in his exparte evidence has examined himself as PW1, who has stated that he was engaged as mortar mate on contract basis by the respondent on 6.12.1999, who continued as such till 2002 and then he was orally sent to market Committee Solan by the respondent and after one year, he was terminated from service on 30.11.2003 by serving letter Ex. PA, who approached Administrative Tribunal which was dismissed for want of jurisdiction, the copy of which is Ex. PB, who served with the Market Committee w.e.f. 2.9.1999 to 26.10.2003 continuously for more than 450 days from the date of his initial engagement, who also served with Marketing Board Shimla w.e.f. 6.9.1999 to 31.3.2002 and after his transfer, he served for six months with the Marketing Committee, Solan as per agreement dated 2.12.2002, copy of which is Ex. PC and juniors to him S/Shri Kulwant and Patram are still working with the respondents, hence prayed for reinstatement with seniority, continuity alongwith full back wages.

11. I have considered the respective contention of the petitioner and have scrutinized the record of the case.

12. After the close scrutiny of un rebutted exparte evidence on record and having regard to the fact that the petitioner has worked with the respondents from 6.12.1999 to 31.3.2002, , who was illegally terminated from service by the respondents without any notice under section 25F of the Industrial disputes Act, 1947 and even his juniors S/Shri Kulwant and pat Ram are still working with the respondents and therefore, on the basis of un-rebutted evidence on record, I am satisfied that the petitioner has completed more than 240 working days in twelve calendar months preceding his termination and the juniors to petitioner are still working with the respondent and thereby violated the principle of first come last go which amounts to unfair labour practice. Obviously therefore, his termination w.e.f. 1.12.2003 by the respondent without complying with the provisions of Industrial disputes Act, 1947 is held illegal and improper. I therefore, order for the reinstatement of petitioner in service alongwith seniority and continuity. However the petitioner is not entitled to back wages as he has not placed any material on record to substantiate that he was not gainfully employed after his termination as a result of which the reference is ordered to be answered in affirmative. Let a copy of this award be sent to the appropriate government for its publication in official gazette. File, after completion, be consigned to records.

Announced in the open court today on this day of 7th July, 2009 in the presence of petitioner AR.

By order,
J. S. MAHANTAN,
Presiding Judge.

**IN THE COURT OF JAGMOHAN SINGH MAHANTAN, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT, SHIMLA**

Ref No. 94 of 2006.
Instituted on 13.7.2006
Decided on 7.7.2009.

Hari Singh s/o Shri Bhoop Singh, r/o Village Ajroli, P.O Koti Bounch, Tehsil Shillai, District Sirmour, H.P.
...Petitioner.

Vs.

The Divisional Forest Officer, Forest Division Renukaji, District Sirmour, HP. . . Respondent.

Reference under Section 10 of the Industrial Disputes Act, 1947.

For petitioner : Shri R. K. Khidta, Ld. Csl.
For respondent : Shri Jagdish Kanwar, Ld. DDA.

AWARD

1. The following reference has been received from appropriate government by this court for adjudication:

“Whether the termination of services of Shri Hari Singh s/o Shri Bhoop Singh workman by the Divisional Forest Officer, ForestDivision Renuka, District Sirmour, HP w.e.f. 16.6.2004 without

complying the provisions of Industrial Disputes Act, 1947 as alleged by the workman is proper and justified? If not, what relief of service benefits and amount of compensation, the above aggrieved workman is entitled to?"

2. The petitioner has filed a claim asserting therein that he was engaged as chowkidar/beldar on daily wages basis by the respondent department in the year 1991, who worked as such till May, 1993 in Kandadi nursery beat and the services of the petitioner were terminated by the respondent department orally in May, 1993 and then the petitioner filed demand notice before the Labour-cum-Conciliation Officer, Solan and the respondent department has agreed to re-engage the petitioner on or before 20-10-1993 and that as per settlement, the petitioner was re-engaged w.e.f. 20-10-1993, who worked till April, 2000, who was again terminated by the respondent department illegally in the month of April, 2000 and then the petitioner approached the Administrative Tribunal and the Original Application of the petitioner treated as representation to the department vide order dated 12-11-2002 but the respondent did not bother to decide the representation of the petitioner and then the petitioner issued legal notice to the respondent, who was called by the respondent department on 24-6-2003, who was re-engaged w.e.f. 1-7-2003 and worked till 30-10-2003 and then again the services of the petitioner were terminated by the respondent department w.e.f. 1-11-2003 without complying the mandatory provisions of the Industrial Disputes Act, 1947, who was again engaged w.e.f. 1st June, 2004 and worked as such till 15-6-2004, who was again terminated w.e.f. 16-6-2004 and visited the office of the respondent many times but he was not re-engaged by the respondent department and that the petitioner had completed 240 days in a calendar year and the services of the petitioner have been orally terminated by the respondent w.e.f. 1-6-2004 without assigning any reason and without complying with the mandatory provisions of Industrial Disputes Act as well as the principle of natural Justice and that the respondent has engaged new persons and the petitioner has not been re-engaged by the department and junior to him S/Shri Jagat, Mast Ram, Dharam Singh, Sita Ram, Mangal Singh, Shobha Ram and Rati Ram are still working with the respondent department which is clear violation of the mandatory provisions of Industrial Disputes Act, 1947 and that the petitioner has every right to continue in the job till the date of superannuation and the termination of the petitioner tantamounts to unfair labour practice and that the petitioner is a workman as defined under the Industrial Disputes Act, who had completed 240 days in calendar year and that the action of the respondent department is totally illegal, unjust, arbitrary and against the principle of natural justice and as such prayed for reinstatement w.e.f. 16-6-2004 with all consequential service benefits, hence this claim duly supported by an affidavit.

3. The respondent resisted and contested the claim of the petitioner, which filed reply *inter alia* raising preliminary objections that the petitioner was engaged as daily wages in the month of May, 1995 and worked till 15th May, 2000 and then he left the job of his own and as per the orders of the Administrative Tribunal, the case of the petitioner was treated as representation and the petitioner had admitted before the Range Officer, Shillai that he left the work with the respondent due to illness and family problem, who approached for work during 7/2003 and worked casually with the department, who was re-engaged in June, 2004 and worked till July, 2004 and then left the job of his own, who was served with notice for non attendance in the presence of Panchayat President which he refused to entertain and that the work assigned to department is purely of casual and seasonal and that the respondent department is not an industry and the petitioner is estopped from filing this claim. On merits, it is contended that the petitioner appeared for work during the month of May, 1995 and worked upto May, 2000 and then he left the job of his own, who came again on work in July, 2003 and in 2004 as per mandays chart Annexure RV. It is admitted that the agreement was signed by the petitioner and Shri M. S. Bains, the then R. O. Shillai and that the petitioner could not be engaged within specified period due to non availability of funds. It is denied that new persons who were juniors to the petitioner were engaged and that the petitioner has not completed 240 working days in each calendar year and as such prayed for dismissal of the claim petition.

4. In the rejoinder, the petitioner controverted the assertions made in the reply and reiterated and re-affirmed the averments of the petition.

5. The following issues were framed by this court on 5.9.2007 on the pleadings of the parties.

1. Whether the service of the petitioner has been illegally terminated by the respondent without complying with the provisions of Industrial Disputes Act, 1947 ? If so, its effect ? ...OPP.
2. If issue No. 1 is proved in affirmative, to what relief the petitioner is entitled to? ...OPP.
3. Whether the petition in the present form is not maintainable? ...OPP.
4. Relief.

6. I have heard the Ld. Counsel for petitioner and Ld. DDA for respondent and have gone through the record of the case.

7. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings on the aforesaid issues are as under :

Issue No. 1	Yes.
Issue No. 2	Entitled for reinstatement in service with seniority and continuity but without back wages.
Issue No. 3	No.
Relief.	Reference answered in affirmative per operative part of award.

REASONS FOR FINDINGS

Issue No. 1.

8. Coming to this issue, the petitioner has examined four PWs in all. The petitioner stepped into the witness box as PW-1, who tendered his affidavit Ex. PA alongwith copy of settlement mark X, order of Administrative Tribunal mark X-1, copies of legal notices Ex. PB & PC and copy of seniority list mark X-2 in evidence.

9. PW-2, Shri Rajinder Kumar, Junior Assistant in the office of Labour Officer, Solan has proved the settlement between the parties Ex. PE.

10. PW-3, Shri Sita Ram, beldar has stated that he is working with the respondent for the last 8-9 years and when he was engaged, Shri Hari Singh also worked there. He does not know since when Hari Singh worked with the respondent and Shri Hari Singh was already working with the respondent when he was engaged and he is still working with the respondent.

11. PW-4, Shri Zalam Sing, R.O. Shillai has stated that the petitioner was engaged as daily wages worker in 1995 and worked till 2004 and proved the mandays chart of the petitioner Ex. P 4/A. Sita Ram s/o Shri Juhia Ram was engaged in July, 2000, Shri Jagat Ram was engaged as beldar in 1998, Shri Shupa Ram and Mast Ram were engaged in 1997, Shri Dharam Singh in 1999, Shri Mangat Singh in 1999, Shri Shobha Ram in 1997 and Shri Rati Ram was engaged in 1999 and all these workers were engaged on daily wages basis as belder and conciliation proceedings under section 12 (3) was held before the Labour-cum Conciliation Officer, Solan in 1993 and the seniority list of the workers is Ex. P 4/B and above named workers are still working with the respondent.

12. To rebut the case of the petitioner, the respondent has examined two RWs in all. RW-1 Shri Khatri Ram, Deputy Ranger, Forest Division Renukaji has stated that the petitioner was engaged as daily wages belder in May, 1995 and continued as such till July, 2000 and then he abandoned the job of his own, who again came to the work in July, 2003 and worked till July, 2004 and proved the mandays chart of the petitioner Ex. RA and the petitioner filed an Original Application (OA) before the Administrative Tribunal which ordered to treat his petition as representation. The petitioner appeared before R.O. Shillai and admitted that he could not attend his work due to illness whose statement was recorded by Shri Singha Singh, Forest Guard before the then R.O. Shillai which is Ex. RB and then the petitioner resumed his duty in July, 2003 and worked till July, 2004 and they called the petitioner to resume his duties from time to time by issuing notices to him through forest workman but the petitioner shown his inability to attend to his duties and proved the notices Ex. RC to RE and the petitioner has not completed 240 working days in any calendar year preceding his termination and no junior to the petitioner was ever engaged after his abandonment and as such the claim of the petitioner is false.

13. RW-2 Shri Madan Singh, Forest Worker has stated that the petitioner was engaged as daily wages beldar earlier with the respondent and he was given the notice Ex. RC by the R. O. Shillai to be served upon Hari Singh petitioner upon which he went to village Ajroli to the house of the petitioner and the petitioner was found there, whogave him statement that he was going to Rohru to attend the work of his brother, were he fetches income of Rs. 150-200/- per day and refused to take the notice and also refused to resume the duties and proved the report Ex. RC-1 which bears his signatures and again on 8-8-2004, he was also sent with notice to the house of the petitioner by R. O. Shillai but the petitioner was not found there, who has gone to Rohru and his report is Ex. RD-1 which was verified by Shri Mohar Singh, Pardhan whose signature is Ex. RD-2 and even the notice Ex. RC was verified by the Pardhan at Ex. RC-2. Similarly, notice dated 16-8-2004 was entrusted to him by R.O. Shillai for the service oof the petitioner upon which he went to the house of the petitioner at Ajroli, who refused to resume his duties as per report Ex. RE-1 which was verified by Pardhan Gram Panchayat, Ajroli at Ex. RE-2.

14. The case of the petitioner is that he being the daily wages beldar having worked with the respondent for 240 working days preceding his termination, who was illegally terminated from service after completing more than 240 working days in a calendar year preceding his termination without notice and compensation which is illegal and even junior to the petitioner Is still working with the respondent departent and as such he is also entitled for reinstatement in service with all consequential benefits.

15. On the contrary, the respondent contends that the petitioner was not terminated from service, who left the job of his own without any intimation to the respondent department and even notices through forest workers were sent to the petitioner to resume his duties but the petitioner failed to report for duties, hence the petitioner is not entitled to any relief.

16. I have considered the respective contentions of both the parties and have scrutinized the record of the case.

17. After the close scrutiny of the record of the case, it is clear that the petitioner had worked with the respondent as daily wages beldar *w.e.f.* 1995 to 2004 as per detail of mandays chart Ex. PA 4/A placed on record but there is nothing on record which could show that the petitioner has completed 240 working days in twelve calendar months preceding his termination, hence the case of the petitioner does not fall under section 25F & N of the Industrial disputes Act, 1947 as the notice was required to be served upon those employees, who have completed 240 working days in twelve calendar months preceding their termination. In the instant cases, the petitioner has failed to prove on record that he had put in 240 working days in twelve calendar months preceding his termination.

14. Now, adverting to the other aspect of the case, it is clear that the petitioner was engaged by the respondent department as beldar, who worked with the respondent till 2004 which fact is not disputed by the respondent. Apart from it, the petitioner has proved on record that his juniors are still continuing with the respondent department by examining PW-4 Shri Zalam Singh. R.O. Shillai, who has admitted that Sita Ram s/o Shri Juhia Ram was engaged in July, 2000, Shri Jagat Ram was engaged as beldar in 1998, Shri Shupa Ram and Mast Ram were engaged in 1997, Shri Dharam Singh in 1999, Shri Mangat Singh in 1999, Shri Shoba Ram in 1997 and Shri Rati Ram was engaged in 1999, who has further admitted that all these workers were engaged on daily wages basis as beldar, who has also proved the seniority list Ex. P4/B of the workers in which the respondent department had engaged many labourers on daily wages by ignoring the seniority of the petitioner which is clear violation of the principle of first come last go and amounts to unfair labour practice and also clear violation of section 25 G & H of the Industrial disputes Act, 1947. Here I am fortified with a view taken by their lordships of *Hon'ble Supreme Court incase titled as State of Haryana Vs. Dilbag Singh reported in 2007 LLR 72 SC* in which it was held that :

"Where Labour Court found that person junior to respondent was still working and thus there was breach of section 25-G & 25-H of the Act. Court directed reinstatement with 50% back wages."

Similarly, our own Hon'ble High Court of HP has held incase titled as *State of HP & Others Vs Bhatag Ram & Anr. as reported in latest HLJ 2007 (HP) 903.* in which it was held that :—

"Continuing of 240 days not necessary in 12 calendar months. It is not necessary to workman to complete 240 days during 12 months for taking the benefits of section 25-G & 25-H of the Act."

15. No doubt, that the respondent has tried to establish on record that the petitioner has left the job of his own, who was called by the respondent to resume his duties but there is nothing on record which could show that the petitioner has left the job of his own as no domestic enquiry was conducted against the petitioner by the respondent department for the pardhan before whom the petitioner is alleged to have served by notice has been examined and obviously therefore, no reliance can be placed on the testimony of the respondent witnesses.

16. Thus, having regard to entire evidence on record and in view of above cited rulings, I have no hesitation in coming to the conclusion that the juniors to the petitioner are still working with the respondent department and as such the termination of services of the petitioner by the respondent *w.e.f.* 16-6-2004 without complying with the provisions of I.D. Act, 1947 is improper and unjustified as the respondent has violated the principle of first come last go and also violated the provisions of sections 25-G & H of the Industrial disputes Act, 1947. Accordingly, issue No. 1 is decided in favour of petitioner and against the respondent.

Issue No. 2.

15. Since I have held under issue No. 1 above that the termination of, the services of the petitioner by the respondents without following with the provisions of Industrial Disputes Act, 1947, is not proper and justified, hence the petitioner is held entitled for reinstatement in service alongwith seniority and continuity from the date of his illegal termination. However the petitioner is not entitled to back wages as he has not placed any material on record to substantiate that he was not gainfully employed after his termination. Accordingly, issue No. 2 is decided in favour of the petitioner and against the respondent.

16. In support of this issue, no evidence was led by the respondents being the legal issue. However, I find nothing wrong with this petition which is perfectly maintainable in the present form. Accordingly, issue No. 3 is decided in favour of petitioner and against the respondent.

RELIEF

As a sequel to my above discussion and findings on issues no.1 to 3, the claim of the petitioner succeeds and is hereby allowed and the petitioner is ordered to be reinstated in service forthwith with seniority and continuity from the date of his illegal retrenchment *i.e w.e.f.* 16.6.2004. However the petitioner is entitled to back wages as he has not placed any material on record to substantiate that he was not gainfully employed after his termination and as such the reference is ordered to be answered in affirmative. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced in the open court today on this day of 7th July, 2009 in the presence of parties counsels.

By order,
J. S. MAHANTAN,
Presiding Judge.

IN THE COURT OF JAGMOHAN SINGH MAHANTAN, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL- CUM-LABOUR COURT, SHIMLA

Ref No. 30 of 2008.
Instituted on 6.6.2008.
Decided on. 7.7.2009.

Harish Kumar S/o Shri Surjeet Singh R/o Village Nanu Bagoria, P.O Dimber, Tehsil Rajgarh, District Sirmour, H.P. . . *Petitioner*

Vs.

1. The Chairman Market committee, Solan, HP.
2. The Secretary, Market Committee, Solan HP. . . *Respondents.*

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner : Shri C. S. Thakur, Ld. Csl.
For respondent : Already exparte.

AWARD

1. The following reference has been received from appropriate government by this Court for adjudication:-

“Whether the termination of services of Shri Harish Kumar S/o Shri Surjit Singh workman by the (1) Chairman Market Committee, Solan, HP (2) Secretary, Market committee, Solan, HP w.e.f. 21.10.2003 without complying the provisions of the Industrial disputes Act, 1947 whereas junior to him are retained by the employer as alleged by the workman is proper and justified? If not, what relief of service benefits and amount of compensation, the aggrieved workman is entitled?”

2. The petitioner has filed a claim asserting therein that he was appointed as helper by the respondent on contractual basis on 3.8.2002 and then his contract was renewed for a period of one year w.e.f. 21.10.2002 to 20.12.2003, who worked with the respondents regularly and has completed more than 240 days and the services of the petitioner was continuous for the purpose of section 25B of the Act, who was illegally terminated from service and that five persons were working with the respondents as per office order dated 16.10.2003 and only the services of the petitioner were terminated and his junior Kulwant Singh is still working with the respondent and that the termination of the petitioner is violative of section 25N of the Act as no notice nor compensation was given to the petitioner and that the petitioner filed an Original Application (OA) before the Administrative Tribunal which was dismissed for want of jurisdiction and that the action of the respondents was arbitrary, violative of natural justice and that the respondents

have no power to terminate the services of the petitioner in this manner and that the respondents have failed to reengage the services of the petitioner despite repeated requests and as such prayed for reinstatement with retrospective effect alongwith all other consequential service benefits , hence this claim.

3. The respondents were properly served through RAD but not put in appearance for 12.9.2008, hence proceeded against exparte.

4. The petitioner in his exparte evidence has examined himself as PW1, who has stated that he was engaged in HP Marketing Committee Solan on 20.7.2002 as helper on daily wages as per agreements Ex. PA & PB and then he was terminated from service without any reason and justification and without compliance of section 25F of the ID Act, 1947, who had worked with the Market Committee Solan for more than 240 working days in the year 2002-03 preceding his termination, copy of which is mark A, who was terminated from service without any notice or compensation. His junior Shri Kulwant Kanwar is still working with the respondent, hence prayed for reinstatement in service with all consequential benefits including back wages.

11. I have considered the respective contention of the petitioner and have scrutinized the record of the case.

12. After the close scrutiny of un-rebutted exparte evidence on record and having regard to the fact that the petitioner has worked with the respondents from 20.7.2002 as helper till 20.10.2003, who was illegally terminated from service by the respondents without any notice under section 25F of the Industrial disputes Act, 1947 and even his junior Shri Kulwant Kanwar is still working with the respondent and therefore, on the basis of un-rebutted evidence on record, I am satisfied that the petitioner has completed more than 240 working days in twelve calendar months preceding his termination and junior to him are still working with the respondents and obviously therefore, his termination w.e.f. 21.10.2003 by the respondents without complying with the provisions of Industrial disputes Act, 1947 is held illegal and improper. I therefore, order for his reinstatement in service alongwith seniority and continuity. However the petitioner is not entitled to back wages as he has not placed any material on record to substantiate that he was not gainfully employed after his termination as a result of which the reference is ordered to be answered in affirmative. Let a copy of this award be sent to the appropriate government for its publication in official gazette. File, after completion, be consigned to records.

Announced in the open court today on this day of 7th July, 2009 in the presence of petitioner counsel.

By order,
J. S. MAHANTAN,
Presiding Judge.

**IN THE COURT OF JAGMOHAN SINGH MAHANTAN, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT, SHIMLA**

Ref No. 52 of 2005.
Instituted on 20.6.2005
Decided on. 7.7.2009.

Rajinder Kumar alias Baboo Ram S/o Shri Mangat Ram R/o village Sarol, P.O Jaher, Tehsil Pachhad, District Sirmour, HP. ...Petitioner.

Vs.

The Executive Engineer, HPPWD Division Rajgarh, District Sirmour, HP. .. Respondent.

Reference under Section 10 of the Industrial Disputes Act, 1947.

For petitioner : Shri J.C Bhardwaj, Ld. AR.

For respondent : Shri Jagdish Kanwar, Ld. DDA.

AWARD

2. The following reference has been received from appropriate government by this court for adjudication:

“Whether the termination of services of Shri Rajinder Kumar alias Baboo Ram S/o Shri Mangat Ram workman by the Executive Engineer, HPPWD, Division Rajgarh, District Sirmour, HP w.e.f. 18.2.1988

without complying the provisions of the Industrial disputes Act, 1947 is legal and justified? If not, what relief of service benefits and amount of compensation, the above aggrieved workman is entitled to?"

2. The petitioner has filed a statement of claim asserting therein that he was engaged in the employment of respondent department during the month of April, 1981 and continued as such till 18.2.1988 when his services were terminated without any cogent reasons of justification by way of oral orders and that the services of the petitioner were continuous for the purpose of section 25B of the Act as he has completed more than 240 days in the employment preceding his termination. The respondent has retained/engaged the juniors to the petitioner which is clear violation of section 25G and 25H of the Act and that the respondent department could not automatically retrench the petition unless there has been a cogent reason for such retrenchment and the respondent has failed to comply with the mandatory procedure contained in section 25N of the Act and the respondent was bound to serve the petitioner with three months notice for retrenchment or have to pay wages in lieu thereof and that the respondent has caused heavy damages to the petitioner in the social status, who was not allowed to enter the working place without assigning any reason and that the retrenchment of the petitioner is bad in law as the petitioner served in the department with devotion and honestly, who was never served with any explanation as the work and conduct of the petitioner was excellent during the entire service tenure and that the petitioner is an illiterate and having ignorant of the procedure and due to lack of knowledge, he could not prefer his demand notice under section 2A earlier, who approached the respondent orally for his reengagement but all in vain and that the removal of the petitioner from employment by the respondent has made his integrity doubtful in the eyes of one and all, who is unemployed since his illegal retrenchment and as such prayed for reinstatement in service alongwith all consequential service benefits of back wages, seniority, continuity, hence this claim.

3. The respondent resisted and contested the claim of the petitioner, which filed reply interalia raising preliminary objections of abandonment and barred by time. On merits, it is contended that the petitioner had worked at his own will as daily paid beldar in the department w.e.f. 4/1981 to 1.3.1988, who was never terminated by the department but he left the job of his own and no junior to the petitioner has been retained in service and no fresh recruitment has been made, hence there is no violation of the provisions of section 25G and 25H of the ID Act, 1947 and that the petitioner has never approached the respondent for employment and that the petitioner has failed to assign any reason for delay and as such prayed for the dismissal of the claim.

4. In the rejoinder, the petitioner controverted the assertions made in the reply and reiterated and reaffirmed the averments of the petition.

5. The following issues were framed by this court on 4.4.2006 on the pleadings of the parties.

1. Whether the service of the petitioner has been illegally terminated by the respondent w.e.f. 18.2.1988? If so, its effect? ...OPP.
2. If issue no.1 is proved in affirmative, to what relief of service benefits, the petitioner is entitled to? ...OPP.
3. Whether the present petition is barred by limitation and is not maintainable? ...OPP.
4. Relief.

6. I have heard the Ld. AR for the petitioner and Ld. DDA for respondent and have gone through the record of the case.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings on the aforesaid issues are as under :

Issue No. 1	Yes.
Issue No. 2	Entitled for reinstatement in service with seniority and continuity but without back wages.
Issue No. 3	No.
Relief.	Reference answered in affirmative per operative part of award.

REASONS FOR FINDINGS

Issue No. 1.

8. Coming to this issue, the petitioner has examined himself as PW-1, who has stated that he was engaged by the respondent in Jan. 1981 and worked as such till 1988, who was not removed from service by the department but due to the death of his father, he could not report for duties for 2-3 days and the department thereafter refused to allow him for work, who was not reengaged despite requests, who had sent the demand notice in 1996 and then the

proceedings started at Solan/Nahan and proved the mandays chart issued by Labour Officer, Ex. PA. No notice nor compensation was paid to him at the time of his removal and he is doing agricultural work.

9. To rebut the case of the petitioner, the respondent has examined RW-1 Er. Vijay Kumar, who has stated that the petitioner was engaged as beldar in 1991, who worked only for 21 days in 1981 as per mandays chart Ex. RA, who had not worked from 1983 to 1986, who came in 1987 and in 1988 the petitioner worked only for two months and then he disappeared, who was not removed by the department and the petitioner would have been permitted to work, if he reported for duty. The reference has been filed before the Court after seventeen years and the petitioner is an agriculturist and earning well.

10. Shri J. C. Bhardwaj, Ld. AR for the petitioner has vehemently argued at the very out set that since the respondent has admitted the mandays chart Ex. RA to be true and correct and after calculating the twelve calendar months preceding his termination which goes to show that the petitioner has completed more than 240 working days but no notice nor compensation was paid to the petitioner at the time of his termination and as such his case squarely falls under section 25N of the Industrial Disputes Act, 1947, hence the petitioner is liable to be reinstated in service with all consequential benefits.

11. On the contrary, Shri Jagdish Kanwar, Ld. DDA for respondent controverted the arguments of Shri Bhardwaj and has submitted that the petitioner has miserably failed to prove on record that he had completed 240 working days in twelve calendar months preceding his termination and even the petitioner has approached this Court after the expiry of seventeen years and as such the claim of the petitioner is liable to be dismissed.

12. I have considered the respective contentions of both the parties and have scrutinized the record of the case.

13. After the close scrutiny of the record of the case, it remains a fact that RW-1 Er. Vijay Kumar has proved the mandays chart of the petitioner Ex. RA and the petitioner put in more than 240 working days in twelve calendar months preceding his termination. Apart from it, the petitioner has proved on record that no notice nor compensation was paid to him at the time of his termination. No doubt, that the respondent has tried to establish on record that the petitioner has abandoned the job of his own but there is nothing on record which could show that the petitioner himself abandoned the job. Moreover, it is well settled in State of HP & Others Vs. Bhatag Ram & Another as reported in latest HLJ 2007 (HP) 903 in which it was held that:-

“Plea of abandonment of job- merely raising the plea of abandonment is nothing but has to be established on the basis of facts. No facts led to substantiate the plea.”

14. Thus, having regard to the entire evidence on record, it can safely be concluded that the petitioner has completed more than 240 working days in twelve calendar months preceding his termination, who was terminated from service without any notice and without any compensation and obviously therefore, the case of the petitioner squarely falls under section 25N of the Industrial disputes Act, 1947. Moreover, the respondent was required to serve the petitioner with three months notice in writing as required under section 25N of the Industrial Disputes Act, 1947 having more than hundred workmen in their establishment as such mandatory notice for three months was required to be served upon the petitioner which was never served upon the petitioner by the respondent for the reasons best known to it. Moreover, Section 25N of the I.D Act, 1947 provides:

SECTION 25N : CONDITIONS PRECEDENT TO RETRENCHMENT OF WORKMAN.

(1) No workman employed in any industrial establishment to which this Chapter applies, who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until:

- (a) the workman has been given three months notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice; and*
- (b) the prior permission of the appropriate government or such authority as may be specified by that government by notification in the official gazette (herein after in this section referred to as the specified authority) has been obtained on an application made in this behalf.*

(2) An application for permission under sub section (1) shall be made by the employer in the prescribed manner stating clearly the reasons for the intended retrenchment and a copy of such application shall also be served simultaneously on the workman concerned in the prescribed manner.

(3) Where an application for permission under sub section (1) has been made, the appropriate government or the specified authority, after making such enquiry as it things fit and after giving the reasonable opportunity of being heard to the employer, the workman concerned and the person interested in such retrenchment, may, having regard to the genuineness and adequacy of reason stated by the employer, the interest of the workman and all other relevant factors, by order and for reasons to be recorded in writing, grant or refuse to grant such permission and a copy of such order shall be communicated to the employer and the workman.

Here, I am fortified with a view taken by the Hon'ble Supreme Court incase titled as Uttranchal Forests Development Corporation & Anr Vs. Jabar Singh & Ors. as reported in 2007-II-LLJ 95 in which it was held that :

“Retrenchment notice in question not complying with two conditions of section 25-N namely giving three months notice to workmen in writing or wages in lieu thereof and taking prior permission of government-Workman, therefore entitled to reinstatement with full back wages”

In the instant case, the respondent has not complied with the mandatory provisions of section 25N of the Industrial Disputes Act, 1947 nor paid the compensation to the petitioner at the time of his termination from service and as such the termination of the petitioner w.e.f. 18.2.1988 is held illegal, improper and unjustified. Moreover, the petitioner could not prove on record that his juniors are still continuing with the respondent department nor the record has been summoned from the office of the respondent to prove that the juniors to petitioner are still working with the respondent department. Therefore, having regard to the entire evidence on record and in view of the fact that the termination of the petitioner for want of proper notice under section 25N and no compensation in lieu of three months notice has been paid to the petitioner by the respondent at the time of his termination and obviously therefore, this issue is decided in favour of petitioner and against the respondent holding that the services of the petitioner has been retrenched w.e.f. 18.2.1988 without giving valid and legal notice is improper, illegal and unjustified.

Issue No. 2.

15. Since I have held under issue no. 1 above, the services of petitioner have been illegally terminated by the respondent without complying with the provisions of Industrial disputes Act, 1947, hence the petitioner is held entitled for reinstatement in service alongwith seniority and continuity from the date of reference i.e w.e.f. 20.6.2005. However, the petitioner is not entitled to back wages as he has not placed any material on record to substantiate that he was not gainfully employed after his termination. Accordingly, issue no.2 is decided in favour of the petitioner and against the respondent.

Issue No. 3

16. In support of this issue, no evidence was led by the respondents nor it was pressed during the course of arguments. However, I find nothing wrong with this petition which is perfectly maintainable in the present form and there is no limitation under the provisions of Industrial disputes Act, 1947 as it was held by their lordship of Hon'ble Supreme Court reported in (1999) 6 SCC 82 case titled as Ajayab singh Vs. Sirhind Co-operative Marketing –cum– processing Service Society Limited and Another in which it was held that:—

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”

Accordingly, on the strength of this ruling, it can safely be concluded that there is no limitation under the Industrial Disputes Act, 1947 and as such issue is decided in negative.

RELIEF

As a sequel to my above discussion and findings on issues no.1 to 3 above, the claim of the petitioner succeeds and is hereby allowed and the petitioner is ordered to be reinstated in service with seniority and continuity from the date of reference i.e w.e.f. 20.6.2005 but without back wages as the petitioner has not placed any material on record to substantiate that he was not gainfully employed after his termination and as such this reference is ordered to be answered in affirmative. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced in the open court today on this day of 7th July, 2009 in the presence of parties counsels.

By order,
JAGMOHAN SINGH MAHANTAN,
Presiding Judge.

IN THE COURT OF JAGMOHAN SINGH MAHANTAN, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT, SHIMLA

Ref No. 31 of 2008.
Instituted on 6.6.2008.
Decided on. 7.7.2009.

Geeta Ram S/o Shri Ram Lal R/o Village Manlog, P.O Deothi, Tehsil & District Solan, H P. . . Petitioner.

Vs.

1. The Chairman Market committee, Solan, HP.
2. The Secretary, Market Committee, Solan HP.
3. Himachal Pradesh marketing Board, Vipnan Bhawan, Khalini Shimla-2 . . Respondents.

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner : Shri J. C. Bhardwaj, Ld. AR.
For respondent : Already exparte.

AWARD

1. The following reference has been received from appropriate government by this Court for adjudication:-

“Whether the termination of services of Shri Geeta Ram S/o Shri Ram Lal workman by the (1) Chairman Market Committee, Solan, HP (2) Secretary, Market committee, Solan, HP w.e.f. 1.12.2003 without complying the provisions of the Industrial disputes Act, 1947 whereas junior to him are retained by the employer as alleged by the workman is proper and justified? If not, what relief of service benefits and amount of compensation, the aggrieved workman is entitled?”

2. The petitioner has filed a claim asserting therein that he was appointed at first instance by the respondent no.3 on 1.12.2000 as chowkidar on contractual basis for one year, who worked with the respondent no.3 regularly and has completed more than 240 days even after the contractual period till his services were transferred with the respondent no.1 & 2 without following the provisions of section 25F of the I.D Act, 1947 and as such the termination of the services of the petitioner without compliance of section 25F of the ID Act is null, void and inoperative in the eyes of law and that the petitioner raised the dispute and served the demand notice under section 2A of the ID Act whereas the petitioner was illegally terminated by the respondent no.1 & 2 vide letter dated 22.9.2003. The petitioner has completed 240 days with the respondent no.1 & 2 within twelve calendar months preceding his termination and the respondent no. 1 & 2 has no legal authority to terminate the services of the petitioner since the appointment has been made by respondent no.3 which is unfair labour practice and that the petitioner was employed as chowkidar by the respondent no.3 but after his transfer with respondent no.1 & 2, he worked as Auction Recorder at the salary of Rs, 2,200/- per month whereas as per government notification, the petitioner was entitled for wages at Rs. 139/- per day and that the petitioner is covered under the definition of a workman under section 2(s) of the act and that the services of the petitioner were continuous for the purpose of section 25B of the Act as the petitioner has completed 240 days during tenure of his service within twelve calendar months preceding his termination, hence the termination of the services of the petitioner is invalid and nonest in the eyes of law due to unfair labour practice and that the respondent has followed the formula of hire and fire as the petitioner was neither chargesheeted nor any enquiry was held against him and the respondents deliberately has committed breach of section 25H of the Act as fresh hands were appointed as chowkidar in place of the petitioner and that the respondents have made the integrity of the petitioner doubtful in the eyes of one and all and as such he is still unemployed and shall remain in future also and that respondents have not served any show cause notice nor any enquiry was held against the petitioner, hence the case of the petitioner comes under the ambit of section 2-oo of the Act and the work and conduct of the petitioner throughout his service tenure remained excellent and as such prayed for reinstatement with retrospective effect with full back wages, seniority and other consequential service benefits , hence this claim.

3. The respondents were properly served through RAD but did not put in their appearance for 12.9.2008, hence proceeded against exparte.

4. The petitioner in his exparte evidence has examined himself as PW1, who has stated that he was engaged in HP Marketing Board Shimla on 1.12.2000 as Chowkidar/Auction recorder on daily wages as per appointment letter Ex. PA where he worked till 30.11.2001 and then he was transferred to Market Committee, Solan on 2.9.2002 where he remained till 30.11.2003 and then he was terminated vide Ex. PB from service without any reason and justification and

without compliance of section 25F of the ID Act, 1947 and then he raised the demand notice Ex. PC against respondent no. 1 to 3, who had worked with the Market Committee Solan for 450 days in the year 2002-03 preceding his termination, copy of which is Ex. PD, who was terminated from service without any notice or compensation, hence prayed for reinstatement in service with all consequential benefits including back wages.

5. I have considered the respective contention of the petitioner and have scrutinized the record of the case.

6. After the close scrutiny of unrebutted exparte evidence on record and having regard to the fact that the petitioner has worked with the respondents from 1.12.2000 as Chowkidar/Auction recorder till 30.11.2003, who was transferred by respondent no.3 to respondent no. 1 & 2, who was illegally terminated from service by the respondent no 1 & 2 without any notice under section 25F of the Industrial disputes Act, 1947 and therefore, on the basis of unrebutted exparte evidence on record, I am satisfied that the petitioner has completed more than 240 working days in twelve calendar months preceding his termination and obviously therefore, his termination w.e.f. 1.12.2003 by the respondent without complying with the provisions of Industrial disputes Act, 1947 is held illegal and improper. I therefore, order for his reinstatement in service alongwith seniority and continuity. However the petitioner is not entitled to back wages as he has not placed any material on record to substantiate that he was not gainfully employed after his termination as a result of which the reference is ordered to be answered in affirmative. Let a copy of this award be sent to the appropriate government for its publication in official gazette. File, after completion, be consigned to records.

Announced in the open court today on this day of 7th July, 2009 in the presence of petitioner AR.

By order,
J. S. MAHANTAN,
Presiding Judge.

**IN THE COURT OF JAGMOHAN SINGH MAHANTAN, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT, SHIMLA.**

Ref No. 61 of 2004.
Instituted on. 22.3.2004
Decided on. 8.7.2009.

Raj Kumar Sharma s/o Shri Jagdish Kumar Sharma R/o Village Chillian, P.O Jalari, Tehsil Naduan, District Hamirpur, HP. . . Petitioner.

Vs.

The Managing Director, M/s Nirmal Spinning Mills Pvt. Ltd Plot no.20 Industrial area, Baddi, District Solan, HP. . . Respondent.

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner : Shri Satyavrat Sharma, Ld. Csl.

For respondent : Shri Jagdish Thakur, Ld. Csl.

AWARD

1. The following reference has been received from appropriate government by this court for adjudication:

“Whether the termination of the services of Shri Rajkumar Sharma s/o Jagdish Kumar Sharma, daily wages driver by the Managing Director M/s Nirmal Spinning Mills Pvt. Ltd. Plot no.20 Industrial area Baddi District Solan, HP w.e.f. 5.2.2003 without complying with the provisions of the Industrial Disputes Act, 1947 is proper and justified? If not, what relief of service benefits and amount of compensation, the above aggrieved workman is entitled to?”

2. The petitioner has filed a statement of claim asserting therein that he was initially appointed as driver on 22.11.1998 by the respondent on a monthly salary of Rs. 2800/- which was enhanced to Rs. 3350/- and the petitioner served with the respondent till 4.2.2003 and thereafter proceeded on leave and on return, the services of the petitioner were dispensed with illegally in violation of section 25F of the Industrial disputes Act, 1947, who had completed more than four years of service as driver under the respondent and the respondent failed to give any notice of retrenchment,

compensation and salary due in lieu of notice or bonus and even junior to the petitioner are still working with the respondent and that the action of the respondent is illegal and arbitrary and in violation of mandatory provisions of the Industrial disputes Act, 1947 and that the petitioner is still unemployed, who has not joined any gainful employment after the termination and as such prayed for reinstatement in service as driver with all benefits incidental thereto alongwith full back wages, seniority, bonus and funds, hence this claim.

3. The respondent resisted and contested the claim of the petitioner, which filed reply interalia raising preliminary objections that there exists no relationship of employee and the employer between the petitioner and the respondent and that there exists no industrial dispute between the parties as the petitioner had worked for two months at head office Kashmir Road, Amritsar and not at Baddi, District Solan and as such the petitioner is not entitled for the protection of section 25F of the Industrial disputes Act and that the respondent had never engaged the petitioner at Baddi, hence the question of retaining his juniors does not arise at all and that the petitioner has not approached this Court with clean hands. On merits, it is denied that the petitioner was appointed as driver on 22.11.1998 by the respondent on the monthly salary of Rs. 2800/- at Baddi, who worked for two months in the year 2002 with the respondent at its head office Amritsar. It is denied that the petitioner served with the respondent till 4.2.2003 and then his services were wrongly terminated in violation of section 25F of the Industrial Disputes Act, 1947. It is also contended that the petitioner has never served with the respondent at Baddi, hence this court has no jurisdiction to try and entertain this case and that the petitioner is not entitled to any retrenchment compensation in lieu of notice and as such prayed for the dismissal of the claim.

4. In the rejoinder, the petitioner controverted the assertions made in the reply and reiterated and reaffirmed the averments of the petition.

5. The following issues were framed by this court on 24.4.2006 on the pleadings of the parties.

1. Whether the service of the petitioner has been illegally terminated by the respondent w.e.f. 5.2.2003 without complying the provisions of I.D Act, 1947? If so, its effect? ... OPP.
2. If issue no.1 is proved in affirmative, to what relief of service benefits, the petitioner is entitled to? ...OPP.
3. Whether the petition is not maintainable as there is no relationship between employee and employer between the parties? ... OPR.
4. Whether this court has no jurisdiction as the cause of action is arisen in Punjab? ...OPR.
5. Relief.

6. I have heard the Ld. Counsels for the parties and have gone through the record of the case.

7. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings on the aforesaid issues are as under:

Issue No.1	No.
Issue No.2	Not entitled to any relief.
Issue No.3	Yes.
Issue No.4.	Not pressed.
Relief.	Reference answered In negative per operative part of award.

REASONS FOR FINDINGS.

Issue No. 1.

8. Coming to this issue, the petitioner has examined himself as PW-1, who has stated that he was engaged as driver by respondent in November, 1998, who was working with Mr. Joginder Khanna, M.D of the respondent company. He was getting Rs. 2800/- at the initial stage, who was drawing Rs. 3350 at the time of his removal from service. M.D was residing at Punchkula. He proceeded on leave on 24.3.2003 and returned on 28.3.2003 and the respondent had paid his salary for the service period. No notice nor compensation has been paid to him by the respondent company and he is doing Mazdoori with Mistry in his village but the work is not of permanent nature and he does not want to work with the respondent.

9. To rebut the case of the petitioner, the respondent has examined RW-1 Shri Suman Singh HR executive with Nirmal Spinning Mills, Ltd. Baddi, who has stated that the petitioner was never engaged by the company at Baddi at any point of time, who had brought the attendance register of the workmen of the company w.e.f. 1.1.1998 till date which shows that the petitioner was never engaged as workman by the respondent company.

10. The case of the petitioner is that he was engaged as driver by the respondent company but he was terminated without any fault and even no notice nor compensation was paid to him at the time of retrenchment, who had worked for more than 240 days in every calendar year preceding his termination.

11. On the contrary, the respondent contends that the petitioner was never engaged by the respondent at Baddi, who worked with their head office at Amritsar for two months only, hence the petitioner is not entitled to any relief as prayed by him.

12. I have considered the respective contentions of both the parties and have scrutinized the record of the case.

13. After the close scrutiny of the record of the case, no doubt, that the petitioner has tried to establish on record that he had put in more than four years of continuous service as driver with the respondent company at Baddi but there is nothing on record which could show that the petitioner had worked with the respondent company for more than 240 days in each calendar year and also in twelve calendar months preceding his termination. Since the petitioner has failed to prove on record that he had put in 240 working days in twelve calendar months preceding his termination, hence the case of the petitioner does not fall under section 25-F of the Act. Moreover, it is well settled that where the workman has not produced any evidence to show that he had worked for more than 240 working days in twelve calendar months preceding his termination and that no evidence has been led in order to show that his juniors are still working with the respondent, the petitioner is not entitled to any protection under the provisions of the Industrial Disputes Act, 1947. Here I am fortified with a view taken by their lordship of Hon'ble Supreme Court in AIR 2006 S.C. 110 case titled as Surindernagar District Panchyat V/s Dayabhai Amar Singh in which it was held that:-

“In case workman claims to have worked for more than 10 years as daily wager. Apart from oral evidence workman has not produced any evidence to prove fact that he has worked for 240 days. No proof of receipt of salary or wages or any record or order in that regard was produced: no co-worker was examined; muster roll produced by employer has not been contradicted. Workman has failed to discharge his burden that he was in employment for 240 days during preceding 12 months of date of termination of his service. Workman not entitled for protection of Section 25-F before his service was terminated.”

14. On the other hand, the respondent has proved on record that the petitioner had worked only for two months with the respondent at its Head Office at Amritsar and obviously, therefore, it can safely be concluded that the services of petitioner has not been terminated wrongly and illegally by the respondent without complying the provisions of Industrial Disputes Act, 1947 and even the petitioner has not served the respondent company at Baddi as Driver at any point of time and the question of his termination from service does not arise at all. Accordingly issue no.1 is decided in favour of respondent and against the petitioner.

Issue No.2.

15. Since I have held under issue no. 1 above, the services of petitioner has not been terminated by the respondent company under the provisions of Industrial Disputes Act, 1947 especially when the petitioner is not proved to have worked as Driver at Baddi Tehsil Nalagarh, Distt. Solan at any point of time and as such his termination from service on 5.2.2000 without complying with the provisions of I. D Act, 1947 does not arise at all, hence the petitioner is not entitled to any claim of service benefits, hence issue no.2 is decided in favour of respondent and against the petitioner.

Issue No.3

16. In support of this issue, the respondent has examined Shri Suman Singh HR executive with Nirmal Spinning Mills Ltd. Baddi, who has stated on oath that the petitioner was never engaged by the company at Baddi at any point of time, who has brought the attendance register of the workmen of the company w.e.f. 1.1.1998 which shows that the petitioner was never engaged as a workman by the respondent company. In view of this un rebutted evidence on record, it can safely be concluded that there is no relationship between the parties as employer and workman and as such the claim of the petitioner is not maintainable in the present form. Accordingly, issue no.3 is decided in favour of the respondent and against the petitioner.

Issue No.4

17. In support of this issue, no evidence was led by the respondent being the legal issue nor it was pressed during the course of arguments. In view of no such evidence on record this issue is decided in negative being not pressed.

RELIEF

As a sequel to my above discussion and findings on issues no.1 to 4, the claim of the petitioner fails and is hereby dismissed and the reference is ordered to be answered in negative. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced in the open court today on this day of 8th July 2009 in the presence of parties counsels.

By order,
JAGMOHAN SINGH MAHANTAN,
Presiding Judge.

**IN THE COURT OF JAGMOHAN SINGH MAHANTAN, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT, SHIMLA**

Ref. 33/2008
9.7.2009

Sh Brij Lal

V/s

M. D. Ambuja Cement Ltd & Others

Present:-None for the petitioner.

Shri Peeyush Verma , Ld. csl for respondent.

It is 3.54 P.M. Case is called in the pre and post lunch sessions but none appeared on behalf of the petitioner. It seems that the petitioner is not interested to pursue his case. Accordingly, the claim of the petitioner is dismissed in default and the reference is ordered to be answered accordingly. Let a copy of this order be sent to the appropriate government for publication in official gazette. File , after completion, be consigned to records.

Announced.
9.7.2009

By order,
Sd/-
Presiding Judge.

**IN THE COURT OF JAGMOHAN SINGH MAHANTAN, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT, SHIMLA**

Ref No. 82 of 2005.
Instituted on. 25.8.2005
Decided on. 9.7.2009.

1. Narinder Singh S/o Shri Sher Singh R/o Village Kherawali, P.O Thana kasoga, Tehsil Nahan District Sirmour, HP.
2. Balak Ram S/o Shri Galwa Ram R/o Village & P.O Jarag, Tehsil Sangrah, District Sirmour, HP.
3. Shalig Ram S/o Shri Sawanu Ram R/o Village Chamia P.O Bhatgarn, Tehsil Sangrah, District Sirmour, HP.
4. Rattan Singh S/o Shri Tulsi Ram R/o Village Ghazla, P.O Jammu Koti, Tehsil Sangrah, District Sirmour, HP.
5. Kalmu Ram S/o Shri Sairu Ram R/o Village Chamia, P.O Bhatgarh, Tehsil Sangrah, District Sirmour, HP.
6. Ran Singh S/o Shri Bonku Ram Village Chacheti, P.O Rajana, Tehsil Sangrah, District Sirmour, HP.
7. Jitender Singh S/o Shri Sadhu Ram R/o Village and P.O Kaulanwala Bhood, Tehsil Nahan District Sirmour, HP.

8. Ramesh Chand S/o Shri Mani Ram R/o Village Kakoh, P.O Rajana Tehsil Sangrah, District Sirmour, HP.
...Petitioners.

Vs.

The Executive Engineer, HPSEB Division, Nahan, District Sirmour, HP.

...Respondent.

Reference under Section 10 of the Industrial Disputes Act, 1947.

For petitioners : Shri A. K. Gupta, Ld. Csl.

For respondent : Already exparte.

AWARD

1. The following reference has been received from appropriate government by this court for adjudication :

“Whether the termination of the services of S/Shri Narender Singh S/o Shri Sher Singh, Balak Ram S/o Shri Galwa Ram, Salig Ram S/o Shri Sawanu Ram, Rattan Singh S/o Shri Tulsi Ram Kalmu Ram S/o Shri Sairu, Ran Singh S/o Shri Dhonku Ram, Jitender Singh S/o Shri Sadhu Ram and Ramesh Chand S/o Shri Mani Ram workmen by the Executive Engineer, HPSEB (Electrical), Division Nahan District Sirmour, HP w.e.f. 20.6.1993, 20.8.1984, 20.12.83, 21.1.90, 20.1.87, 1.4.90, year 1999 and 20.10.1994 without complying with the provision of Industrial Disputes Act, 1947 is proper and justified? If not, what relief of service benefits and amount of compensation, the above aggrieved workmen are entitled to?”

2. The petitioners no.2 to 8 have filed joint statement of claim asserting therein that they were engaged as daily waged workman under the HPSEB Division Nahan and their services were disengaged in different years as are shown in the reference. No notice nor any compensation was given to them and that all the petitioners have completed 240 days of service in view of section 25B of the Industrial Disputes Act, 1947 and that no ten days notice as per standing orders of the Board was served upon the petitioner and that the respondent has failed to follow the principle of last come first go and the juniors to the petitioners are still working with the respondent and that the action of the respondent is unjustified, violative of the Industrial Disputes Act, 1947 as well as the standing orders of the HPSEB which amounts to unfair labour practice and as such prayed for the reinstatement in service with all consequential benefits and petitioner no.1 Shri Narinder Singh has filed a separate claim asserting therein that he was initially engaged under the respondent as daily wages beldar w.e.f. 20.6.1998 till 20.6.1993, who had completed 240 days in each and every calendar year and even in preceding twelve calendar months and the petitioner has been in continuous service under the respondent as per the provisions of section 25B of the Act and that the respondent while dispensing the services of the petitioner did not issue any notice under section 25F of the Industrial Disputes Act, 1947 and after the disengagement of the petitioner, the respondent engaged fresh hands in service which is clear violation of section 25G & H of the Act and that the disengagement of the petitioner is also in violation of Rule 14(2)(a) of the Standing Orders framed by the Board as no ten days notice was served upon the petitioner and that petitioner met with the authorities of respondent for reengagement but the respondent did not pay any heed to the request of the petitioner and as such prayed for reinstatement with consequential benefits, hence this claim duly supported by an affidavit.

3. The respondent resisted and contested the claim of the petitioners, which filed reply interalia raising preliminary objections that the petitioners have no legally enforceable cause of action against the respondent, petition bad for want of better particulars, hit by delay and laches, estoppel and non joinder for necessary parties. On merits, it is contended that the petitioner at serial no. 1 was engaged on daily wages basis on 21.3.1998, serial no.2 w.e.f. 1.12.1983, serial no.3 w.e.f. 21.11.1983 to 20.12.1983, serial no. 4 w.e.f. 1.12.1983, serial no.5 w.e.f. 21.5.1985, serial no.6 w.e.f. 21.7.1985, serial no. 7 not worked with the respondent as per record available and serial no. 8 w.e.f. 21.2.1991 against the specific work of the respondent being executed at different places under the Rural Electrification Programme, who worked with breaks and never completed 240 days service in any calendar year, who left the job of their own and the details of the presence/absence of petitioners are annexure RA-1 to 8, who have not completed 240 days service in any calendar year. It is also contended that the services of the petitioners were never terminated by the respondent, who left the job of their own, hence there is no necessity to comply with the provisions of section 25F of the Act and as such prayed for the dismissal of the claim petition.

4. No rejoinder filed. The following issues were framed by this court on 6.12.2006 on the pleadings of the parties.

1. Whether the services of the petitioners have been illegally terminated by the respondent without complying the provisions of I.D Act, 1947? If so, its effect? ...OPP.

2. If issue no.1 is proved in affirmative, to what relief, the petitioners are entitled to? ...OPP.
3. Whether the present petition is not maintainable in the present form? ...OPR.
4. Relief.
5. I have heard the Ld. Counsel for the petitioners and have gone through the record of the case.
6. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings on the aforesaid issues are as under:

Issue No. 1	No.
Issue No. 2	Not entitled to any relief.
Issue No. 3	No.
Relief.	Reference answered in negative per operative part of award.

REASONS FOR FINDINGS.

Issue No. 1.

7. Coming to this issue, the petitioners have examined Shri Narinder Singh as PW-1, Who has stated that he was engaged on 20.6.1988 and worked as beldar and their work was regular, who was working regularly but after 1990, the department started giving them breaks, who worked for more than 240 days in 89 and 90 and then the department started giving them breaks after 90 and the persons S/Shri Preetam Singh, Narinder Singh and Tej Vir who were working with them for carrying the poles are still working. He is under Matric. No notice nor compensation was given to him before his removal and the department told that they would reengage him as and when the muster roll is issued, who visited the office of respondent for reengagement but in vain and as such prayed for reinstatement with all consequential benefits.

8. It is important to mention here that the respondent had failed to appear before this Court on 5.6.2008, hence proceeded against exparte vide order dated 5.6.2008. It is significant to note that no other petitioners appeared in the witness box to corroborate the testimony of PW-1 Narinder Singh despite having granted sufficient opportunities to them and consequently the evidence of the petitioners were closed by the order of the Court on 8.9.2008.

9. I have considered the respective contentions of petitioners and have scrutinized the record of the case.

10. After the close scrutiny of the record of the case, no doubt that the petitioners have claimed having put in the service of more than 240 working days in each and every calendar year preceding their termination but the Ld. Counsel for the petitioner has not disputed the detail of mandays chart of the petitioners annexure RA-1 to 8 filed by the respondent alongwith its reply. The only grouse of the petitioners is that the respondent has violated the provisions of Rule 14 (ii) of Standing Orders of HPSEB as no ten days notice was given to them before their termination. It is abundantly clear that no notice for ten days was required to be served upon the petitioners before the termination of the petitioners as it was held by our own High Court that no notice was required to be given to the petitioner by HPSEB even if the employment is below one year, as it was held in Executive Engineer Joginder Nagar & Sanju S/O Sh. Gantu Ram, Vill Dalana, P.O. Ballhjoli, Tehsil. Jogindernagar, Distt. Mandi H.P. & Presiding Officer, Labour Court-Cum-Industrial Tribunal, Dharamsala in CWP No. 1383 of 2005 in which it was held that :-

“The HP State Electricity Board shall be exempted from all the provisions of standing Orders Act, and thereafter no 10 days notice is required to be given under Standing Orders to the employee. Admittedly, the employees had not completed 240 days and the Tribunal could not have come to the rescue of the employee.”

Thus, the petitioners are not entitled to any service benefits as they have failed to prove on record that they had worked for 240 days in twelve calendar months preceding their termination. Therefore, having regard to the entire evidence on record and in view of the above cited ruling of our own Hon'ble High Court, it can safely be concluded that the petitioners have not completed 240 working days in twelve calendar months preceding their termination nor their juniors are proved to be continuing in service after their removal and obviously, therefore, it can safely be concluded that the services of petitioners have not been terminated wrongly and illegally by the respondent without complying the provisions of Industrial Disputes Act, 1947. Accordingly, issue no.1 is decided in favour of respondent and against the petitioners.

Issue No. 2.

11. Since I have held under issue no. 1 above that the services of petitioners have not been terminated wrongly and illegally by the respondent under the provisions of Industrial Disputes Act, 1947 as well as under the provisions of rule 14 (ii) of Standing Order of HPSEB, hence the petitioners are not entitled to any service benefits. Accordingly, issue no.2 is decided in favour of the respondent and against the petitioners.

Issue No. 3

12. In support of this issue no evience was led by the respondent who was also proceeded against exparte. However, I find nothing wrong with this petition which is perfectly maintainable in the present form. Accordingly, issue no.4 is decided in favour of petitioners and against the respondent.

RELIEF

As a sequel to my above discussion and findings on issues no.1 to 3, the claim of the petitioners fails and is hereby dismissed and the reference is ordered to be answered in negative. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced in the open court today on this days of 9th July, 2009 in the presence of petitioners counsel.

By order,
JAGMOHAN SINGH MAHANTAN
Presiding Judge.

**IN THE COURT OF JAGMOHAN SINGH MAHANTAN, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT, SHIMLA**

Ref No. 11 of 2006.
Instituted on. 20.2.2006
Decided on. 9.7.2009.

Ram Krishan S/o Shri Chetan Ram VPO, Shingla, Tehsil Rampur Bushahr, District Shimla HP. . . *Petitioner.*

Vs.

The Executive Engineer, HPSEB Division Rampur, District Shimla, HP.

...Respondent.

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner : Shri R.K Khidta, Ld. Csl.

For respondent : Ms. Sharmila Patial, Ld, Csl.

AWARD

1. The following reference has been received from appropriate government by this court for adjudication :

“Whether the termination of services of Shri Ram Krishan S/o Shri Chetan Ram workman by the Executive Engineer, HPSEB Division Rampur, District Shimla, HP w.e.f. 25.4.1997 without complying the provisions of Industrial disputes Act, 1947 is proper and justified? If not, what relief of service benefits and amount of compensation, the above aggrieved workman is entitled to?”

2. The petitioner has filed a statement of claim asserting therein that he was engaged as beldar by the respondent in the month of Jan. 1990 and worked at Jagat Khana for seven months and then the petitioner worked under Sub Division Rampur till 25.4.1997 and then the services of the petitioner were illegally terminated by the respondent w.e.f. 25.4.1997 and that the petitioner visited the office of respondent number of times for his reengagement, who was assured that he would be called in job very soon and even the younger brother of the petitioner was suffering from blood cancer, who died in the year 2000 and that the petitioner had completed 240 days in a calendar year and the services of the petitioner has been orally terminated by the respondent without assigning any

reason and without complying the mandatory provisions of Industrial Disputes Act as well as the provisions of standing orders of the HPSEB and that as per standing orders, the respondent is duty bound to issue ten days notice to the petitioner even if the workman has not completed 240 days in a calendar year and that the petitioner filed demand notice on 4.9.2003 and that the respondent has engaged the other new persons but the petitioner has not been reengaged by the respondent which is clear violation of section 25H of the Industrial disputes Act and that the petitioner has every right in the job till the date of superannuation and the termination of the petitioner tantamounts to unfair labour practice and that the petitioner is a workman as defined in the Industrial Disputes Act, who had completed 240 days in preceding calendar year from the date of his termination and as such prayed for reinstatement in service alongwith all consequential benefits of back wages, seniority, continuity, hence this claim duly supported by an affidavit.

3. The respondent resisted and contested the claim of the petitioner, which filed reply interalia raising preliminary objections of non joinder of necessary party, no cause of action, estoppel and time barred. On merits, it is contended that the petitioner was engaged against a specific work in Electrical Sub Division Rampur w.e.f. 25.2.93 and worked as such upto 24.4.97 with breaks whose services came to an end automatically, who had never completed 240 days in any calendar year. It is denied that standing order are not applicable in this case as the petitioner was engaged against specific work, hence there was no need to serve ten days notice to the petitioner. It is also contended that no new person was engaged in place of the petitioner and as such prayed for the dismissal of the claim.

4. In the rejoinder, the petitioner controverted the assertions made in the reply and reiterated and reaffirmed the averments of the petition.

The following issues were framed by this court on 28.12.2006 on the pleadings of the parties.

1. Whether the service of the petitioner has been illegally terminated without complying with the provisions of Industrial disputes Act, 1947? If so, its effect? ...OPP.
2. If issue no.1 is proved in affirmative, to what relief, the petitioner is entitled to? ...OPP.
3. Whether the present petition is not maintainable in the present form? ...OPR.
4. Relief.
6. I have heard the Ld. Counsels for the parties and have gone through the record of the case.
7. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings on the aforesaid issues are as under:

Issue No. 1	Yes.
Issue No. 2	Entitled for reinstatement in service with seniority and continuity but without back wages.
Issue No. 3	No.
Relief.	Reference answered in affirmative per operative part of award.

REASONS FOR FINDINGS.

Issue No.1.

8. Coming to this issue, the petitioner has examined two PWs in all. The petitioner appeared into the witness as PW-1, who has stated that he was engaged as beldar in the year 1990 at Jagat Khana Rampur in HPSEB Sub Division and then he worked at Rampur Sub Division till 25.4.1997 with fictional breaks and then he was sent to home with the assurance that he would be called by the department when there would be sufficient work. No notice nor compensation was paid to him, who had completed more than 240 working days in preceding calendar year. His juniors S/Shri Jai Lal, Prabhu Dayal are still working with the HPSEB and the respondent had not called him for reengagement though he went to Rampur several times requesting for reengagement, who could not raise the Industrial Dispute in time as his brother was fallen ill, who was suffering from blood cancer and ultimately died in the year 2000 and he also filed the demand notice Ex. PA and the reply Ex. PB was filed by the respondent and the work of the respondent is still continuing and still available.

9. PW-2, Jai Lal, T-Mate of HPSEB Rampur has stated that he was engaged as beldar on 17.2.1992 at Jagat Khana Rampur in HPSEB Sub division and is working till date and when he was engaged, the petitioner was in service as beldar.

10. To rebut the case of the petitioner, the respondent has examined RW-1 Er. H.R Thakur, who has stated that he is posted as an Additional Assistant Engineer with respondent since October, 1991 and is well conversant with

the facts of the case. The petitioner was engaged as daily wages beldar on 20.2.1993, who continued as such till 24.4.1997 with fictional breaks and then the petitioner abandoned the job of his own, who was never terminated by the respondent. No junior to the petitioner was engaged by the respondent and the petitioner has not completed 240 working days in any calendar year preceding his termination. He left to mention the dates w.e.f. 20.2.1993 to 24.2.1993 when the petitioner also worked with the respondent.

11. The case of the petitioner is that he being daily wages beldar having worked for more than 240 days in each calendar year preceding his termination, who was orally terminated from service by the respondent as no notice nor any compensation was paid to him and even juniors to him are still working with the respondent board, hence he is liable to be reinstated in service with all consequential benefits.

12. On the contrary, the respondent contends that the petitioner had not completed 240 working days in twelve calendar months preceding his termination, who was engaged against specific work and no juniors to the petitioner were retained by the respondent and as such the claim of the petitioner is liable to be dismissed.

13. I have considered the respective contentions of both the parties and have scrutinized the record of the case.

14. After the close scrutiny of the record of the case, it is clear that the petitioner was engaged as beldar on daily wages in Jan. 1990 who continued as such till 25.4.1997 with fictional breaks, who was terminated from service without notice and without payment of compensation and his juniors S/Shri Prabhu Dayal and Jai Lal are still working with the respondent. Apart from it, the respondent has denied that the petitioner was engaged as daily wages beldar in the year 1990. However, the respondent has admitted in the reply filed before Conciliation Officer, Rampur Ex. PB that the petitioner was engaged on 12.2.1992 whereas Shri Jai Lal appeared as PW-2 has stated that he was engaged on 17.2.1992 but RW-1 Er. H.R Thakur has stated that Shri Jai Lal was engaged on 12.2.1993. Even if, his statement is believed to be true and correct even then Shri Jai Lal PW-2 is proved to be junior to the petitioner who is still working with the respondent, who also appeared into witness box as PW-2 and has stated that he was engaged as beldar on 17.2.1992 at Jagat Khana Rampur in HPSEB Sub Division and is still working as such till date and obviously therefore, it is proved on record beyond any doubt that Shri Jai Lal junior to the petitioner is still working with the respondent which amounts to unfair labour practice and against the principle of first come last go and the case of the petitioner squarely falls under section 25G & H of the Industrial disputes Act, 1947. Here I am fortified with a view taken by their lordships of **Hon'ble Supreme Court incase titled as State of Haryana Vs. Dilbag Singh reported in 2007 LLR 72 SC** in which it was held that :

“Where Labour Court found that person junior to respondent was still working and thus there was breach of section 25-G & 25-H of the Act. Court directed reinstatement with 50% back wages.”

Similarly, our own Hon'ble High Court of HP has held incase titled as **State of HP & Others V/s Bhatag Ram & Anr. as reported in latest HLJ 2007 (HP) 903.** in which it was held that :-

“Continuing of 240 days not necessary in 12 calendar months. It is not necessary to workman to complete 240 days during 12 months for taking the benefits of section 25-G & 25-H of the Act.”

Thus, having regard to the above cited rulings and entire evidence on record, I have no hesitation in coming to the conclusion that the services of the petitioner were illegally terminated by the respondent without complying the provisions of Industrial disputes Act, 1947 by retaining the junior persons to the petitioner in the job, who are still continuing with the respondent. Accordingly, issue no.1 is decided in favour of petitioner and against the respondent.

Issue No. 2.

15. Since I have held under issue no. 1 above, the services of petitioner have been illegally terminated by the respondent without complying with the provisions of Industrial disputes Act, 1947, hence the petitioner is held entitled for reinstatement in service alongwith seniority and continuity from the date of his illegal termination. However, the petitioner is not entitled to back wages as he has not placed any material on record to substantiate that he was not gainfully employed after his termination. Accordingly, issue no.2 is decided in favour of the petitioner and against the respondent.

Issue No. 3

16. In support of this issue, no evidence was led by the respondents nor it was pressed during the course of arguments. However, I find nothing wrong with this petition which is perfectly maintainable in the present form. Accordingly, issue no.3 is decided in favour of the petitioner and against the respondent.

RELIEF

As a sequel to my above discussion and findings on issues no.1 to 3, the claim of the petitioner succeeds and is hereby allowed and the petitioner is ordered to be reinstated in service with seniority and continuity but without back wages as the petitioner has not placed any material on record to substantiate that he was not gainfully employed after his termination and as such the reference is ordered to be answered in affirmative. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced in the open court today on this day of 9th July, 2009 in the presence of parties.

By order,
JAGMOHAN SINGH MAHANTAN
Presiding Judge.

**IN THE COURT OF JAGMOHAN SINGH MAHANTAN, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT, SHIMLA**

Ref No. 38 of 2005.
Instituted on..2005
Decided on. 10.7.2009.

Roop Singh S/o Shri Phool Singh R/o Village Bhilchapper, P.O Bilaspur, District Yamunanagar (Haryana).
...Petitioner.

Vs.

Managing Director M/s Durga wheat Products (Pvt) Ltd. Trilokpur Kala Amb, Tehsil Nahan, District Sirmour, HP.
...Respondent.

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner : Sh. Yudhbir Singh ,Ld. Csl.
For respondent : Sh. Atul Jhingan, Ld. Csl.

AWARD

1. The following reference has been received from appropriate government by this court for adjudication:

“क्या प्रबन्धक निदेशक मैसर्स श्री दुर्गा व्हीट प्रोडक्ट्स (प्रा0) लिमिटेड त्रिलोकपुर काला अम्ब, तहसील नाहन, जिला सिरमौर द्वारा श्री रूप सिंह अकाउंटेंट सुपुत्र श्री फूल सिंह, गांव भील छप्पर, डा0 बिलासपुर, तहसील जगाधरी, जिला यमुनानगर (हरियाणा) के विरुद्ध आरोप-पत्र तिथि 28-11-2002 के आधार पर करवाई गई जांच निष्पक्ष एवं न्याय संगत है ?”

(ii) “क्या उपरोक्त प्रबन्धक द्वारा उक्त श्रमिक की 25-6-2003 से सेवा समाप्ति का दण्ड उपरोक्त आरोप-पत्र में वर्णित आरोपों के अनुरूप यदि नहीं, तो उक्त श्रमिक किन सेवा लाभों एवं क्षतिपूर्ति का पात्र है।”

2. The petitioner has filed a statement of claim asserting therein that he was appointed as an accountant in the company of the respondent on 5.4.1994 with pay scale of Rs. 7000/- per month with Rs. 500/- yearly increments upto 10,000/- and the petitioner was asked to deposit sum of Rs. 10,000/- as security vide appointment letter dated 5.4.1994, who joined the respondent company on 14.4.1994 and the petitioner has worked with the entire satisfaction of the respondent company and no complaint whatsoever has been made against him and that the petitioner rendered his best service to the company till 2002 and on 7.11.2002, the petitioner informed the Managing Director Shri Rajan Sood that he had to go to attend the marriage of his relatives and for this purpose, the petitioner requested for three days leave and Shri Rajan Sood allowed the leave of the petitioner and when the petitioner came back on 11th Nov. 2002 to join his duties, who was restrained to occupy the seat by Shri Rajan Sood, who orally terminated the services of the petitioner and that on 13.11.2002, the MD vide letter dated 15.11.2002 informed the petitioner that he was found absent from duty since 8.11.2002 and directed the petitioner to join the duties within three days and that the petitioner received

the letter on 20.11.2002 and on 21.11.2002, the petitioner informed the respondent that he was joining the duties vide joining letter dated 21.11.2002 and when the petitioner went to the company, the MD was not there and it was told to the petitioner by the employees of the company that there was a specific direction of the company not to allow the petitioner to join the duties and then the petitioner rang up the Labour Inspector, Nahan, who advised him to talk to the Director and the petitioner rang up Shri Sanjay Sood (one of the Director) on his mobile, who informed that he was in Shimla and he would be coming on 23.1.2002 and then the petitioner sent the joining letter by post to the Labour Inspector, Nahan and that the petitioner again approached Shri Rajan Sood and Shri Sanjay Sood on 23.11.2002 but both the Directors informed the petitioner that they did not require his services and an accountant had already been appointed in his place and that the petitioner vide letter dated 29.12.2002 issued a demand notice to the respondent company mentioning therein that his pay for seven months has not been paid by the respondent, who was illegally terminated from service without following the due process of law and that the Labour Inspector on the basis of demand notice issued a notice on 14.1.2003 and informed the company to appear on 15.3.2003 and that the respondent company appeared before the Labour Inspector and Shri Rajan Sood told that the company has already initiated the enquiry against the petitioner and requested to stop the process of settlement and that the company chargesheeted the petitioner on 28.11.2002 which was not received by the petitioner and that the petitioner vide letter dated 6.1.2003 replied the chargesheet and that the company appointed its own employee as an Enquiry Officer which is totally illegal and that vide letter dated 18.1.2003, the respondent company filed the reply of demand notice in which the false story has been concocted by the respondent with the ill motive to justify their illegal action and that on 27.4.2002, the statement of Shri Sanjay Sood was recorded by the Enquiry Officer and the petitioner requested the Enquiry Officer to grant him opportunity to cross examine Shri Sanjay Sood vide application dated 18.2.2003 which was replied by the company vide letter 27.2.2003 and that the respondent wanted to remove the petitioner and to terminate his services without following the due procedure of law and the Enquiry Officer had given its findings against the petitioner vide findings report dated 27.4.2003 and that the finding report was delivered to the petitioner by the MD on 8.5.2003 and the petitioner was asked to submit his comments and the petitioner submitted his comments vide annexure P-15 and that the petitioner was asked by the respondent as to why he should not be terminated from service vide show cause notice dated 5.6.2003 which was replied by the petitioner vide reply dated 19.6.2003 and that the petitioner was dismissed from service vide order dated 25.6.2003 by the respondent company and then the petitioner raised the Industrial Dispute and then the petitioner was not allowed by the company to join his duties despite his requests and the Company initiated enquiry against the petitioner on false and fictitious grounds which are not sustainable in the eyes of law and the petitioner was proceeded on leave with the prior permission of the respondent company and the allegations regarding misbehavior with the Director is false and levelled against the petitioner with ill motive to terminate the services of the petitioner without giving him the service benefits and that before terminating the services of the petitioner, no notice nor lawful reason has been given to the petitioner whose services were terminated on the basis of bias report and the entire game plan has been contemplated by the respondent company with the help of Enquiry Officer just to harass the petitioner and as such prayed that the enquiry report/findings may be set aside and quashed and dismissal order dated 25.6.2003 may be declared as illegal, unjust and violative of Industrial disputes Act, 1947, reinstatement with all consequential benefits, back wages, gratuity and bonus with interest, hence this claim duly supported by an affidavit.

3. The respondent resisted and contested the claim of the petitioner, which filed reply inter alia raising preliminary objections that the petitioner was employed as accountant with the respondent but despite the fact that his job entailed responsibilities, who remained continuously absent w.e.f. 8.11.2002 without prior permission or intimation to the respondent, who failed to report for duty or to assign any reason for his absence, who threatened and black mailed the management, if any action was taken against him for his abrupt, continued and unauthorized absence from duty, which acts amount to misconduct on the part of the petitioner and the petitioner was sent a show cause notice/charge sheet dated 28.11.2002 wherein it was stated that he had remained absent since 8.11.2002 without permission or intimation and despite letter dated 15.11.2002, he had not cared to join duty or to inform about his reason of absence, who was asked to explain as to why disciplinary action should not be taken against him and the petitioner refused to accept the show cause notice/charge sheet which was returned undelivered to the respondent. The respondent informed the petitioner vide letter dated 19.12.2002 that Shri V.K Gupta had been appointed as an Enquiry Officer to enquire into the allegations/charges against him and enquiry would be held on 30.12.2002 at 12.00 Noon in the factory office and was given the opportunity to defend himself, the petitioner appeared and sought a copy of the charge sheet which was duly supplied to him on 30.12.2002 under receipt and the case was further listed on 4.1.2003 at 12.00 Noon and domestic enquiry was conducted and the petitioner was given full opportunity to defend himself in the disciplinary proceedings and the enquiry officer vide order dated 27.4.2003 found the petitioner guilty of misconduct and the management vide letter dated 8.5.2003 sent a copy of the findings to the petitioner and sought his comments within ten days and after considering the reply of the petitioner and after giving him show cause notice dated 5.6.2003, he was dismissed from service of the respondent company w.e.f. 25.6.2003 after complying with all relevant provisions of law applicable to the facts and circumstances of the matter and that the claim petition is neither competent nor maintainable and that the petitioner as not approached the Court with clean hands and that the petitioner is guilty of suppressio-vari and suggestio-falsi. On merits, it is contended that the petitioner was appointed as an accountant in the respondent company. It is denied that the petitioner had been appointed on 5.4.1994 in the pay scale of Rs. 7000/- per month with

500/- yearly increments upto Rs. 10,000/-. It is also denied that the petitioner informed the Managing Director Shri Rajan Sood that he had go to attend some marriage. It is denied that the leave of the petitioner was allowed and the petitioner came back on 11.11.2002 to join his duties but he was restrained to join. It is also denied that the petitioner on 21.11.2002 informed the respondent that he was joining his duties as the joining letter dated 21.11.2002 was never received by the respondent which seems to have been fabricated by the petitioner in order to justify a false claim with the respondent. It is contended that the petitioner telephonically threatened the Managing Director of the resonant with dire consequences and demanded that he be paid a sum of Rs. one lakh failing which he would somehow burden the respondent with a claim of at least Rs. 2 lakh. It is denied that the Managing Director had issued directions to employees of the company not to allow the petitioner to join his duties and that the petitioner never tried to reconcile the matter or join his duties. It is contended that the demand notice of the petitioner was replied by the respondent vide reply dated 18.1.2003 and that the petitioner was trying to build up all new story in support of his false claim as the chargesheet was sent to the petitioner under registered AD which the petitioner refused to receive and the AD was returned to the respondent with the remarks "refused to receive" which is deemed having received under the law and that the enquiry has been conducted in the most fair and impartial manner in which the petitioner was given full opportunity to defend his case and after the conclusion of the enquiry, the services of the petitioner were terminated by the respondent company. It is denied that the respondent company wanted to remove the petitioner and to terminate his service without paying anything. It is also denied that before termination of the services of the petitioner, no notice nor lawful reason has been given and as such prayed for the dismissal of claim petition.

4. In the rejoinder, the petitioner contervorted the assertions made in the reply and reiterated and reaffirmed the averments of the petition.

5. The following issues were framed by this court on 7.5.2007 on the pleadings of the parties.

1. Whether the services of the petitioner have been illegally terminated on the basis of the charge sheet dated 28.11.2002? If so, its effect? ...OPP.
2. If issue no.1 is proved in affirmative, to what relief, the petitioner is entitled to? ...OPP.
3. Whether the petition in the present form is not maintainable? ...OPR.
4. Relief.

6. I have heard the Ld. Counsels for the parties and have gone through the record of the case.

7. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings on the aforesaid issues are as under:

Issue No. 1	No.
Issue No. 2	Not entitled to any relief.
Issue No. 3	No.
Relief.	Reference answered In negative per operative part of award.

REASONS FOR FINDINGS

Issue No. 1.

8. Coming to this issue, the petitioner has examined himself as PW-1, who has stated that he was working as an accountant since 14.4.1994 under respondent company, who was engaged in the pay scale of Rs. 3,000/- with annual increment of Rs. 500/- and on 7.11.2002, he was in the factory and proceeded on two days sanctioned leave for 8.11.2002 and 9.11.2002 and on 11th Sep. 2002, the respondent disallowed his joining, who was not permitted to work. No notice has been given to him and on 20.11.2002, he received a letter from the respondent company asking him to report for duties and on 21.11.2002, he came to the factory but the owner of the factory was not there and the staff members told him that he was not permitted to work in the factory as per the directions of the owner and then he contacted the Labour Inspector on telephone, who directed him to send the letter to the management with a copy to him and also discussed the matter with the management and then he contacted the owner Shri Rajan Sood on telephone but clarified that Sanjay Sood was in marriage at Shimla told him that they would be coming and discuss the matter within 2-3 days and on 23.11.2002 when he visited the company, he was not permitted by the owner of the company to join his duties, who told him that they had made the arrangement of accountant and they do not require his service. He raised the demand notice and the Inspector has fixed the matter for conciliation meeting on 5.2.2003 which was failed as the owner of the company told the inspector that they already started the enquiry. The Enquiry Officer has not given him any chance during the enquiry and the entire enquiry was conducted to favour the company. Copy of charge sheet

was supplied to him and he filed the reply, who was not given any opportunity to explain his position by the enquiry officer and the Enquiry Officer gave his findings on 5.3.2003 and copy was sent to him and then he submitted the reply of the findings, who received the show cause notice from the company which was replied by him and he received the termination notice on 25.6.2003. His salary was due from April 2002 and no bonus has been paid to him from the date of his joining till date. Leave encashment was permitted only for two years and during the enquiry, he applied to the Enquiry Officer that he be permitted to engage his defence representative from outside but his request has been rejected as per proceeding dated 27.2.2003 and as such prayed that he may be given all service benefits including reengagement and the entire enquiry is biased and is contrary to the record. No fair opportunity has been provided to him by the Enquiry Officer, who was not permitted to engage defence representative of his choice.

9. To rebut the case of the petitioner, the respondent has examined two RWs in all. RW-1 Shri Rajan Sood has stated that he is Managing Director of M/s Durga Wheat products Pvt. Ltd. Kala Amb since 1994 and he is well conversant with the facts of the case. The petitioner was engaged as an accountant in 1994 at the salary of Rs. 2000/- per month. No appointment letter was issued to the petitioner at the time of his appointment. He did not issue appointment letter Ex. PA to the petitioner which appears to be fake document. The petitioner was accessible to all documents being the accountant and the petitioner fabricated the appointment letter by mentioning his salary as Rs. 3000 instead of Rs. 2000/-. No security of Rs. 10,000/- as mentioned in Ex. PA was deposited by the petitioner. The petitioner remained absent since 8.11.2002 upon which he issued a letter Ex. RA to the petitioner on 15.11.2002 which was refused by the petitioner and the unclaimed registered letter is Ex. RB and the petitioner talked to him on telephone, who threatened him to pay either Rs. one lakh or face consequences in the Court, He called upon him to the factory on 23.11.2002, who did not turn up and then he wrote a letter to the petitioner on 28.11.2002 with a copy to the Labour Inspector, Nahan but he did not receive any reply of the petitioner and then the petitioner was charge sheeted and domestic enquiry was conducted against the petitioner, who was informed vide letter Ex. RC and Shri V.K Gupta was appointed as an enquiry officer and the petitioner was also associated in that enquiry, who defended the case himself but refused to sign the proceedings of the enquiry and after conducting the enquiry, the enquiry officer submitted his report to him and the copy of which was sent to the petitioner. The petitioner also wrote a letter Ex. RD to him which was replied by him vide Ex. RE. The conciliation proceedings were held at Nahan before Labour Officer Nahan where he filed the reply Ex. RF. The petitioner also made an application Ex. RG before Enquiry Officer demanding the cross examination of Sanjay Sood Director of the respondent and the reply is Ex. RH which was filed by him. The Enquiry Officer held the petitioner guilty and the enquiry report is Ex. RI and the copy was sent to the petitioner vide Ex. RJ. The petitioner filed comments upon the findings of the Enquiry Officer is Ex. RK and then show cause notice Ex. RL was sent to the petitioner to which the petitioner filed reply Ex. RM and then the petitioner was dismissed from service for which the information vide letter Ex. RN was sent to the petitioner with a copy to the Labour Inspector, Nahan vide letter Ex. RO.

10. RW-2 Shri V.K Gupta has stated that he was appointed as an Enquiry Officer by the MD Durga Wheat Products Pvt. Ltd Kala Amb on 19.12.2002 vide letter Ex. RC, who held the enquiry and recorded the evidence of the parties and the petitioner also joined the proceedings, who was allowed to engage his defence assistant but not from outside. The petitioner did not engage the defence assistant and contested the same himself and proved the enquiry report Ex. R-1 and then he submitted the enquiry report alongwith the proceedings to the management and the management sent the copy of enquiry report to the petitioner.

11. Shri Yudhbir Singh Ld. counsel for the petitioner has vehemently argued at the very outset that enquiry was not conducted by the respondent in proper and lawful manner as the petitioner went on two days sanctioned leave to attend the marriage of his relative and when he reported back to his duties, he was not permitted to join his duties which is totally illegal, arbitrary and also against the well settled provision of natural justice as no opportunity of being heard was afforded to the petitioner by the respondent management and the enquiry against the petitioner was conducted in illegal manner to oust the petitioner from the job, hence the petitioner is entitled to be reinstated in service with all consequential benefits including back wages.

12. On the contrary, Shri Atul Jhingan, Ld. Counsel for respondent has controverted the arguments of Shri Singh and has submitted that the proper and fair enquiry was conducted against the petitioner as the petitioner absented himself from duty without any prior permission of his superiors and then the enquiry was conducted against the petitioner, who fully participated in it, in which the allegations were proved against him and then the petitioner was rightly dismissed from service.

13. I have considered the respective contentions of both the parties and have scrutinized the record of the case.

14. After the close scrutiny of the record of the case, it remains a fact that the bone of contention between the parties is that the petitioner claims that he had proceeded on two days sanctioned leave to attend the marriage of his relative whereas the respondent contends that the petitioner proceeded on leave without informing his superiors and did not come back and when he joined, he could not assign any reason for his absence, whose explanation was called and

his reply was not found satisfactory and then he was charge sheeted and Shri V.K Gupta was appointed as an Enquiry Officer in this case, who conducted the enquiry in accordance with law by giving full opportunities to engage defence assistant and to cross examine the respondent evidence and to produce his evidence in his defence. It is significant to note that there is nothing on record which could show that the enquiry Officer was biased or he conducted the enquiry in a partial manner and as such I find nothing wrong with the enquiry report Ex. RI of Enquiry Officer, who has given the reasonwise findings on the absence of the petitioner. I have scrutinized the testimony of MW-1 and MW-2 and I find no reason to disbelieve their testimony and it stands proved on record that the petitioner threatened the Managing Director of the Company, who also tried to black mail the MD on 21.11.2003 while talking to him on the mobile phone. It is significant to note that the petitioner has not proved on record his application for leave for two days which he alleged to have been sanctioned by the respondent company. It may not be out of place to mention here that had the application for leave of the petitioner was sanctioned by the respondent at any point of time before proceeding on leave as claimed by the petitioner, the petitioner could have proved on record that it was duly sanctioned by the competent officer/Director of the company. In view of no such evidence on record and having regard to the fact that the domestic enquiry was validly and legally conducted by the respondent management and therefore, it does not lie in the mouth of the petitioner to say that his services have been illegally terminated on the basis of charge sheet dated 28.11.2002 and accordingly, this issue is decided in favour of the respondent and against the petitioner.

Issue No. 2.

15. Since I have held under issue no.1 above, that the services of the petitioner have been legally terminated on the basis of chargesheet dated 28.11.2002, hence the petitioner is not entitled to any relief as prayed by him. Accordingly, issue no.2 is answered in negative.

Issue No. 3.

16. In support to this issue, no evidence was led by the respondent nor it was pressed during the course of arguments. However I find nothing wrong with this petition which is perfectly maintainable in the present form. Accordingly, issue no.3 is decided in favour of petitioner and against the respondent.

RELIEF

As a sequel to my above discussion and findings on issues no.1 to 3, the claim of the petitioner fails and is hereby dismissed and the reference is ordered to be answered in negative. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced in the open court today on this day of 10th July, 2009 in the presence of parties counsels.

By order,
JAGMOHAN SINGH MAHANTAN
Presiding Judge.

**IN THE COURT OF JAGMOHAN SINGH MAHANTAN, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT, SHIMLA**

Ref No. 72 of 2000.
Instituted on 30.5.2000.
Decided on. 13.7.2009.

Amrik Singh S/o Shri Roop Singh R/o Village & P.O Palasi Kalan, Tehsil Nalagarh, District Solan, HP.

. . Petitioner.

Vs.

The Manager M/s Surendra Engineering Company, Pvt. Ltd, Bharatgarh Road, Nalagarh, District Solan, HP.

. . Respondent.

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner : Shri B.L Lakhanpal, Ld. AR

For respondent : Already exparte.

AWARD

1. The following reference has been received from appropriate government by this Court for adjudication:

“Whether the termination of Shri Amrik Singh by the M/s Surendra Engineering Company Pvt. Ltd Bharatgarh Road, Nalagarh District Solan, HP w.e.f. 21.1.1999 without any notice, charge sheet, enquiry and without compliance of section 25F of the Industrial Disputes Act, 1947 is legal and justified? If not, to what relief of service benefits and amount of compensation, Shri Amrik Singh is entitled?”

2. The petitioner has filed a claim asserting therein that he was employed with the respondent management on 28.12.1995 and that the workers formed their trade union which came to existence on 19th Jan. 1999 and they applied for its registration on 23rd March, 1999 under the name and style of Surendra Engineering Company Karmachari Sangh and that when the management came to know about the formation of the Union, the management became hostile and resorted to vindictive attitude towards the active members of the Union and the petitioner being the member of the Union was targeted by the management and that on 20.1.1999, the petitioner was called in the office by the management and was forced to sign some papers and after getting signed, the petitioner was paid to Rs. 980/-, who was told that his services are no longer required and the last wages of the petitioner was Rs. 1600/- per month and that no charge sheet or notice was served upon the petitioner and even no enquiry was conducted against the petitioner nor compensation was paid to him by the respondent and as such the action of the respondent is clear cut violation of section 25F of the Industrial Disputes Act, 1947 and that the petitioner remained present in the factory, who was disallowed to enter the gate by the respondent w.e.f. 21.1.1999 which is clear cut case of unfair labour practice and as such prayed for reinstatement in service with continuity and full back wages, hence this claim.

3. The respondent resisted and contested the claim of the petitioner which filed reply interalia raising preliminary objections that the petitioner himself requested that he was not interested in the job whose dues were cleared at his own requests, hence there is no question of termination and estoppel. On merits, it is contended that the respondent has no knowledge about the formation of trade union by the workers of the company and its registration. It is denied that the petitioner was called to the office of the Management on 20.1.1999 or forced to sign any paper. It is contended that Shri Madan Mohan Khatri, J.E, Incharge of the machine shop under whose supervision the petitioner had been working made a report on 23.1.1999 that the petitioner refused to do the work entrusted to him and the petitioner asked for all his dues be paid to him as he was not interested to continue in the job and as such all the dues of the petitioner were paid to him and that since the petitioner left the job of his own volition, hence there is no question of serving a charge sheet or notice upon the petitioner and that neither any demand notice was served by the petitioner on management nor he was disallowed from entering the premises of the factory and as such prayed for the dismissal of the claim petition.

4. It is not out of place to mention here that the respondent failed to appear before this Court on or after 12.7.2007, hence proceeded against exparte vide order dated 4.10.2007.

5. The petitioner in his exparte evidence has examined himself as PW-1, who appeared in the dock and stated that he was engaged as helper with Surendra Engineering Company Pvt. Ltd Bharatgarh, Nalagarh w.e.f. 28.12.1996 where he continued as such for three years and then he was terminated from service without notice and without payment of compensation, who had worked continuously for three years without any break and as such prayed for reinstatement in service with seniority and continuity, who is an agriculturist and is still unemployed. No enquiry was conducted against him. His juniors S/Shri Darshan singh, Harvinder singh, Jagmohan Singh and Pritam Singh are still continuing with the respondent company, who did not disobey the orders of his superiors nor he indulged in indiscipline and altercation.

6. Shri B.L Lakhanpal Ld. AR for the petitioner has vehemently argued at the very out set that there is ample evidence on record which could show that the petitioner was shunted out from service without any notice, compensation, charge sheet and domestic enquiry and even the juniors to the petitioner are still working with the respondent.

7. I have considered the respective contention of the petitioner and have scrutinized the record of the case.

8. After the close scrutiny of unrebutted exparte evidence on record and having regard to the fact that the petitioner was engaged as helper on daily wages by the respondent on 28.12.1996, who continued as such for three years and thereafter the petitioner was terminated from service without notice, compensation, charge sheet and without conducting any enquiry and even juniors to the petitioner S/Shri Darshan singh, Harvinder singh, Jagmohan Singh and Pritam Singh are still continuing with the respondent company and therefore, on the basis of unrebutted exparte evidence on record, I am satisfied that the petitioner was terminated from service by the respondent without notice and without payment of compensation and without following the mandatory provisions of Industrial disputes Act, 1947 as no opportunity of being heard was afforded to the petitioner which amounts to unfair labour practice. Thus, the claim of

the petitioner is allowed *ex parte* and as such the petitioner is held entitled for his reinstatement in service alongwith seniority and continuity. However the petitioner is not entitled to back wages as he has not placed any material on record to substantiate that he was not gainfully employed after his termination as a result of which the reference is ordered to be answered in affirmative. Let a copy of this award be sent to the appropriate government for its publication in official gazette. File, after completion, be consigned to records.

Announced in the open court today on this day of 13th July, 2009 in the presence of petitioner AR.

By order,
J. S. MAHANTAN,
Presiding Judge.

**IN THE COURT OF JAGMOHAN SINGH MAHANTAN, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT, SHIMLA**

Ref No. 17 of 2007.
Instituted on. 16.3.2007
Decided on. 13.7.2009.

Om Prakash S/o Shri Kaka Ram R/o Village Dhaun, P.O Rama Tehsil Nahan District Sirmour, HP.

...Petitioner.

Vs.

The Divisional Manager, HP Financial Corporation, Division Nahan District Sirmour, HP.

...Respondent.

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner : Shri R.K Khidta, Ld. Csl.
For respondent : Shri Jagat S. Shyam, Ld. Csl.

AWARD

1. The following reference has been received from appropriate government by this court for adjudication:

“Whether the termination of the services of Om Parkash S/o Shri Kaka Ram daily wages peon by the Divisional Manager, HP financial Corporation, Division Nahan, District Sirmour, HP w.e.f. 22.1.2003 without complying the provisions of Industrial Disputes Act, 1947 is proper and justified? If not, what relief of service benefits and amount of compensation, the above workman is entitled to?”

2. The petitioner has filed a statement of claim asserting therein that he was engaged as Chowkidar by the respondent in the month of November, 1991 in the office of respondent and worked as such till 23.1.2003 continuously and the services of the petitioner were terminated by the respondent w.e.f. 23.1.2003 without following the mandatory provisions of Industrial Disputes Act, 1947 and that the work and conduct of the petitioner always remained upto the satisfaction of the officials of the respondent corporation, who had completed 240 days in each calendar year and the services of the petitioner have been terminated without assigning any reason to him and that after termination of services, the petitioner visited the office of the respondent number of times for his reengagement but all in vain and then the petitioner filed an O.A (Original Application) before Administrative Tribunal which was withdrawn by the petitioner for want of jurisdiction and then the petitioner raised demand notice before the Conciliation Officer, Nahan and that the petitioner had completed 240 days in a calendar year, who had every right to remain in the job till the date of superannuation and that the respondent has also engaged new persons and the petitioner was not called back and even juniors S/Shri Gokal Chand and Dharshan were not terminated by the respondent and that the termination of the petitioner tantamounts to unfair labour practice of which the petitioner is victim and the action of the respondent corporation is against the provisions of Industrial Disputes Act and also against the principle of natural justice as no notice nor compensation was paid to the petitioner which is mandatory requirement of the Industrial Disputes Act, 1947 and that the petitioner is a workman as defined in the Industrial disputes Act as the petitioner used to work manually with the company and that the respondent has not taken the permission from the competent authority prior to his termination and that the termination order is not valid in the eyes of law and as such prayed that the termination order dated 22.1.2003 be quashed and set aside and to order for reinstatement with full back wages and other service benefits, hence this claim duly supported by an affidavit.

3. The respondent resisted and contested the claim of the petitioner, which filed reply interalia raising preliminary objections that the services of the petitioner was on contract basis for limited purpose and for limited period as the employment of the petitioner was co-terminus with the transfer of Industrial Unit of M/s Vaishnu Papers and Board Mills, Dhaula Kuan Distt. Sirmour, HP in which the petitioner was appointed which had been taken over by the respondent corporation under section 29 of the SFCA Act, 1951 and there was no industrial activity in the closed factory at the time of taking over of its assets by the respondent and as such the petitioner cannot be deemed as an employee of the Industrial Concern and that the petitioner is not the employee of the respondent corporation and it is in the nature of employment of a limited nature and for limited purpose and period is co-terminus with the sale of such industrial unit where the petitioner had been appointed and that the respondent corporation does not have any regular vacancy of chowkidars and no rules and regulations have been framed to engage them and since the petitioner was engaged on contract basis, the completion of 240 days of continuous service in a calendar year cannot entitle the petitioner for his regularization and that there is no industrial activities in the closed/sick units at the time of takeover of the assets by the respondent Corporation and the petitioner at his instance was engaged in the takeover units for watch and ward purposes and that the Corporation has not framed any rules for engaging the services of Chowkidars and that the respondent Corporation is not the employer. On merits, it is contended that the respondent Corporation had engaged the petitioner as daily wages chowkidar for watch and ward of takeover assets of the unit of Shimla Textile Mills, Distt. Sirmour, HP on 20.11.1991, who remained there upto 30.7.1992 whereafter his services were not required as the takeover assets were sold/transferred to its purchaser and then the petitioner was again engaged for the purpose of watch and ward of takeover unit i.e M/s Deepak Oil and General Mills Paonta Sahib on 1.8.1992, who remained there till 13.10.1992 and thereafter the petitioner was again engaged for the purpose of watch and ward of the takeover assets of M/s Safety Steel Ropes Pvt. Ltd Paonta Sahib on contract basis and the agreement was executed on 11.1.1993, who remained as such from 15.12.1992 to 30.8.1993. Again the petitioner was engaged with M/s Vishnu Papers and Board Mills, Dhaula Kuan on contract basis, who remained there w.e.f. 8.10.1993 to 22.1.2003. It is also contended that the terms and conditions of the engagement of the petitioner are contained in the agreements executed by him whose services were purely of temporary nature and co-terminus with the sale and purchase of takeover unit and as such the petitioner cannot claim his regular appointment and that the respondent corporation has not violated any provisions of the Industrial Disputes Act, 1947 as no industrial dispute ever arose in view of the fact that the petitioner is neither the workman in an industrial establishment nor any employee and employer relationship has ever existed and that the termination action of the respondent initiated against the petitioner is valid, legal, reasonable and proper in the facts and no fault can be found with it on any ground and as such prayed for the dismissal of the petition.

4. In the rejoinder, the petitioner controverted the assertions made in the reply and reiterated and reaffirmed the averments of the petition.

5. The following issues were framed on the pleading of the parties on 25.10.2007:

1. Whether the service of the petitioner has been illegally terminated w.e.f. 12.1.2003 without complying with the provisions of ID Act, 1947? If so, its effect? ...OPP.
2. If issue no.1 is proved in affirmative, to what relief, the petitioner is entitled to? ...OPP.
3. Whether the present petition is not maintainable as the petitioner is not employee of the respondent corporation? ... OPR.
4. Relief.

6. I have heard the Ld. Counsels for the parties and have gone through the record of the case.

7. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings on the aforesaid issues are as under:

Issue No. 1	No.
Issue No. 2	Not entitled to any relief.
Issue No. 3	No.
Relief.	Reference answered in negative per operative part of award.

REASONS FOR FINDINGS

Issue No. 1.

8. Coming to this issue, the petitioner has examined two PWs in all. The petitioner stepped into the witness box as PW-1, who has stated that he was engaged as chowkidar with the respondent on November, 1991 where he worked till 23.1.2003 and then he was removed from service without any notice nor paid any compensation, who had

completed 240 working days in each calendar year preceding his termination. His juniors S/Shri Uday Ram and Darshan were working at the time of his termination and as such prayed for reinstatement in service with seniority and continuity in service with back wages. No contract was signed by him at the time of his engagement as chowkidar and the work is still available with the department and he is unemployed after his termination.

9. PW-2, Sarvjeet Singh, Branch Manager, HPFC Nahan has stated that the petitioner was engaged as chowkidar on daily wages with the respondent on 20.11.1991 and worked till 22.1.2003 and proved the mandays chart Ex. PA. Shri Uday Ram S/o Shri Gokal Chand was engaged with the respondent on 10.1.1989 and worked till 19.12.2003 and they do not maintain any seniority.

10. To rebut the case of the petitioner, the respondent has examined Shri Suresh Chand as RW-1, who has stated that he is posted as an Assistant Manager with the respondent since 2004 and is well conversant with the facts of the case. The petitioner was engaged as chowkidar on daily wages since November, 1991 in Shimla Textile, Paonta Sahib, who continued as such till 30.7.1992 and then the petitioner was engaged as chowkidar on 1.8.1992 in Deepak Oil Mills, Paonta Sahib, who continued as such till 13.10.1992 and then the petitioner was again engaged on 15.12.1992 in Safety Steel Ropes, Paonta Sahib, who continued as such till 30.8.1993 and then the petitioner entered into an agreement with the respondent which is Ex. RA and then the petitioner was reengaged as chowkidar on 8.10.1993 in Vashnu Paper Board Mills, Paonta Sahib, who continued as such till 22.1.2003 vide agreement Ex. RB. There was clear stipulation in the agreement that the services of the petitioner would be no longer required when the unit is sold and the petitioner was no regular employee of the respondent, who was appointed for limited purpose as per agreement as mentioned above.

11. Shri R.K Khidta, Ld. Counsel for petitioner has vehemently argued at the very outset that the petitioner was engaged by the respondent as chowkidar on daily wages, who had completed 240 working days in each and every calendar year preceding his termination whose services have been terminated illegally by the respondent without assigning any reason and even junior to the petitioner are still working with the respondent which is clear violation of the provisions of Industrial Disputes Act, 1947 and as such the petitioner is entitled to reinstatement in service with all consequential benefits.

12. On the contrary, Shri Jagat Singh Shyam, Ld. Counsel for respondent has controverted the arguments of Shri Khidta and has submitted that the engagement of the petitioner is purely on co-terminus basis, who was never engaged on regular post at any point of time whose work is not permanent but casual and as such the petitioner is not entitled to any relief as prayed by him.

13. I have considered the respective contentions of both the parties and have scrutinized the record of the case.

14. After the close scrutiny of the record of the case, the engagement and termination of the petitioner as chowkidar was not disputed by both the parties as the petitioner was engaged as chowkidar on daily wages on November, 1991, who was never engaged as daily wages peon as claimed by the petitioner in the reference, who remained with the respondent corporation till 22.1.2003 as per mandays chart Ex. PA. The bone of contention between the parties is that the petitioner was engaged on co-terminus basis or not? It is significant to note that the petitioner was engaged as chowkidar on daily wages since November, 1991 till 22.1.2003 with different factories which were declared as sick units and taken over by the respondent corporation under Rule 29 of the HPFC Act, 1951. It is borne out from the record that the petitioner was engaged as chowkidar with Safety Steel Ropes Paonta Sahib from 15.12.1992 to 30.8.1993 vide agreement Ex. RA and then he was reengaged as chowkidar on 8.10.1993 by Vashnu paper Road Mills Paonta Sahib till 22.1.2003 vide agreement Ex. RB and therefore it is clear that the petitioner continued as chowkidar with different sick units from time to time for watch and ward duty and his service came to an end with the sale/purchase of these sick units. I find force in the contention of Ld. Counsel for respondent that the job of the petitioner was co-terminus with the disposal of the sick units as envisaged in agreements Ex. RA & RB placed on record. Moreover, RW-s Shri Suresh Chand Assistant Manager, HPFC Nahan has categorically stated that there was clear stipulation in the agreement that the services of the petitioner will be no longer required when the unit is sold. Apart from it, the petitioner was never appointed on regular post but was appointed as chowkidar to do watch and ward duty of different sick units from time to time but it does not give rise to inference that the petitioner has right over the post after completing 240 working days in twelve calendar months preceding his termination. Moreover, it is well settled in (2006) 6 SCC 221, case titled as Reserve Bank of India V. Gopinath Sharma & Anr. In which it was held that:

“Workman not appointed to any regular post but engaged on the basis of need of work on day to day basis, held, had no right to the post.”

15. Similarly in 2006 (2) SCC 794 in case titled as Haryana State Agricultural Marketing Board V. Subhash Chand & Anr. in which it was held that:-

“If nature of service does not come within purview of definition of retrenchment in section 2(oo), question of applicability of section 25-G does not arise. Bare perusal of offer of appointment (set out in para 2 herein) clearly shows that respondent was appointed on seasonal contracts. Hence, respondent not having been reengaged on expiry thereof, he was not retrenched within meaning of section 2(oo), and his case fell exception in section 2(oo)(bb). Hence, section 25-G was inapplicable in his case and dispensing with engagement of respondent cannot be said to be unwarranted in law.”

16. Apart from it was further held incase titled as Punjab State Electricity Board V. Darbara Singh reported in 2006 LLR 68 SC. and incase titled as Municipal Council Samrala V. Surhwinder Kaur reported in 2006 LLR 1009 SC. In which it was held that:-

“material on record established that engagement of workman was for specific period and as such his termination will be excluded as per the provisions of section 2(oo)(bb) of the I.D Act and hence, no retrenchment compensation will be payable on his termination even when he has worked for more than 240 days in the preceding 12 calendar months.”

Thus, on the strength of the above cited rulings, it is clear that the engagement of the petitioner was purely on contract basis as per agreements Ex. RA & RB and as per need of work to do watch and ward duty of the sick units of the respondent corporation and it does not give right to the petitioner even if he has completed 240 working days in twelve calendar months preceding his termination as held incase titled as Municipal Council Samrala V. Surhwinder Kaur reported in 2006 LLR 1009 SC.

17. Now advertng to the other contention of the petitioner that his juniors are still working with the respondent corporation but it remains a fact that the petitioner has admitted in his cross-examination as PW-1 that the above named juniors Udey Ram and Darshan Singh were never engaged in the factories where he was engaged by the respondent corporation and even PW-2 Shri Sarvjeet Singh Branch Singh HPFC Nahan has stated that shri Udey Ram S/o Gokal Chand was engaged with the respondent from 10.1.1989 and worked till 19.12.2003 whereas the petitioner was engaged as chowkidar with the respondent w.e.f. November, 1991 who worked till 23.1.2003 and obviously therefore, Shri Udey Ram is not the junior to the petitioner but rather he is senior to the petitioner and as such it does not lie in the mouth of petitioner to say that his juniors are still continuing with the respondent and as such his contention is devoid of force and is hereby rejected.

18. Thus, having regard to the entire evidence on record and inview of the fact that the engagement of the petitioner was purely on co-terminus basis, who had no right over the regular post and it came to an end on the disposal of the sick units. Accordingly, I have no hesitation in coming to the conclusion that the services of the petitioner has not been illegally terminated by the respondent w.e.f 12.1.2003 without complying with the provisions of I.D Act, 1947. Accordingly, issue no.1 is decided in favour of the respondent and against the petitioner.

Issue No. 2

19. Since I have held under issue no.1 & 4 above that the services of the petitioner were not illegally terminated by the respondent w.e.f. 12.1.2003 without complying with the provisions of industrial Disputes Act, 1947, hence the petitioner is not entitled to any relief. Accordingly, issue no.2 is decided in favour of the respondent and against the petitioner.

Issue No. 3

20. In support of this issue, no evidence was led by the respondent on this issue nor it was pressed during the course of arguments. In view of no such evidence on record on this issue, I hold this issue in negative.

RELIEF

As a sequel to my above discussion and findings on issue no.1 to 3 above, the claim of the petitioner fails and is hereby dismissed and as such the reference is ordered to be answered in negative. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced in the open court today on this day of 13th July 2009 in the presence of parties counsels.

By order,
J. S. MAHANTAN
Presiding Judge.

IN THE COURT OF JAGMOHAN SINGH MAHANTAN, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA

Ref No. 84 of 2005.

Instituted on. 26.9.2005

Decided on. 13.7.2009.

1. Pawan Kumar, S/o Shri Baldev Singh R/o Village Bidhinaseri, P.O Badhouni Ghat, Tehsil Kasauli, district Solan, HP.
2. Beer Singh s/o Shri Baldev Singh R/o Village Bidhinaseri, P.O Badhouni Ghat, Tehsil Kasauli, district Solan, HP.
3. Heera Pal S/o Shri Ram Saran R/o Village Bidhinaseri, P.O Badhouni Ghat, Tehsil Kasauli, district Solan, HP.
4. Raj Kumar S/o Shri Mullu Ram R/o Village Bidhinaseri, P.O Badhouni Ghat, Tehsil Kasauli, district Solan, HP.

...Petitioners.

Vs.

The Executive Engineer, HPSEB Electrical Division, Parwanoo District Solan HP.

...Respondent.

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner : Shri Rakesh Manta, Ld. Csl.

For respondent : Ms. Sharmila Patial, Ld. Csl.

AWARD

1. The following reference has been received from appropriate government by this court for adjudication:

“Whether the termination of the services of 1. Shri Pawan Kumar S/o Shri Baldev Singh 2. Beer Singh S/o Shri baldev Singh 3. Shri Heera Pal S/o Shri Ram Saran and Shri Raj Kumar S/o Shri Mullu Ram workmen by the Executive Engineer, HPSEB Electrical Division Parwanoo, District Solan w.e.f. 20.8.1999, 20.8.1999, 20.12.1999 and 20.2.2000 without complying the provisions of Industrial Disputes Act, 1947 is proper and justified? If not, what relief of service benefits and amount of compensation, the above aggrieved workmen are entitled to?”

2. No claim on behalf of Heera Pal petitioner filed on record. The remaining petitioners have filed a statement of claim asserting therein that the respondent is only licensee to supply the Electrical Power to various agencies and have employed the workmen around 50-60 thousand and as such the subject matter falls under chapter VB of the Act, 1947 and that the respondent is also the state of HP Govt. under article 12 of constitution of India and that the petitioners were engaged with the HPSEB as beldar in the month of April, 1990 at Barotiwala and Baddi Electrical station whose services have been illegally terminated on 1st July, 2001 by way of a trickiness programme which was constituted by the some bureaucrat on 30.6.2001 at 5.00 PM and the Junior Engineer told the petitioners that new muster roll has not been sent by the Divisional Management and that the petitioners being employed by the respondent is a workman under section 2(s) of the Act and for the purpose of section 25B as the petitioners enjoyed the continuity of service with more than 240 days in each and every calendar year and that the petitioners have become unemployed since the date of their illegal termination from service which falls under section 200 of the Act and the retrenchment of the petitioners from service is null, void and inoperative due to failure of the employers to follow the provisions of section 25F and 25N of the Act and as such prayed that the award be passed in their favour alongwith costs, hence this claim.

3. The respondent resisted and contested the claim of the petitioner, which filed reply interalia raising preliminary objections of enforceable cause of action, no legal or vested right of the petitioners having been infringed or violated by the respondent, claim is hit by the vice of delay and laches and time barred. On merits, it is contended that the petitioners S/Shri Pawan Kumar, Beer Singh and Raj Kumar were initially engaged w.e.f. 26.1.1991, 1.4.1990 and 26.5.1990 respectively in the first instance with certain interruptions/breaks and then the petitioners abandoned the job of their own and the petitioner after a long spell of time again approached the respondent for their reinstatement, who were reengaged and the petitioners worked upto 20.8.1999, 20.8.1999 and 20.2.2000 respectively and then the petitioners left the job of their own and did not turn up w.e.f. 21.8.1999, 21.8.1999 and 21.2.2000 respectively, who had not completed 240 days continuous service in the preceding twelve calendar months and thus the petitioners have not acquired the status of temporary workman and that the petitioners are estopped to file and maintain the petition by their act, conduct, acquiescence, omission and commission and that the petition seeking reference of the dispute for

adjudication is not maintainable at this belated stage as the petitioners had abandoned the job of their own, who have not retrenched by the respondent and as such prayed for the dismissal of the claim.

4. No rejoinder filed. The following issues were framed by this court on 16.3.2007 on the pleadings of the parties.

1. Whether the services of the petitioners were illegally terminated by the respondent without complying with the provisions of Industrial Disputes Act, 1947? If so, its effect? ...OPP.
2. If issue no.1 is proved in affirmative, to what relief, the petitioners are entitled to? ...OPP.
3. Whether the petition in the present form is not maintainable as the petitioners have no cause of action? ...OPR.
4. Whether the petition is barred by limitation? ...OPR.
5. Relief.

5. I have heard the Ld. Counsels for the parties and have gone through the record of the case.

6. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings on the aforesaid issues are as under:

Issue No.1	No.
Issue No.2	Not entitled to any relief.
Issue No.3	No.
Issue No.4.	No.
Relief.	Reference answered in negative per operative part of award.

REASONS FOR FINDINGS

Issue No. 1.

7. Coming to this issue, the petitioners have examined two PWs in all. PW-1, Shri Pawan Kumar has stated that he was engaged as beldar by respondent in 1990 where he worked till 30.6.2001, who was removed from service without any notice or compensation, who requested the JE in July, 2001 for his reengagement but nothing has been done, who worked for 240 days in one year. No duty card or pay slip has been issued to him and he is having no attendance card with him and prayed for reinstatement.

8. PW-2 Shri Raj Kumar has stated that he was engaged as beldar in 1990, who served with respondent till 30.6.2001, who was removed from service without notice or compensation, who had completed 240 days in each calendar year, who visited the office of JE and SDO for his reengagement twice and thrice but nothing has been done and as such prayed for reinstatement.

9. To rebut the case of the petitioner, the respondent has examined RW-1 Er. J.S Rana, who has stated that he is posted as an AEE HPSEB, Sub Division Barotiwala since 11.4.2008 and he is well conversant with the facts of the case. The petitioners were engaged as beldar on daily wages with the respondent and petitioner Pawan Kumar was engaged on 26.1.1991, who continued as such till 20.8.1999 while Shri Bir Singh petitioner was engaged on 1.4.1990 and continued as such till 20.8.1999 and Shri Rajkumar was engaged on 26.5.1990 and continued as such till 20.2.2000 with fictional breaks and then the petitioners abandoned their job of their own, who were never terminated by the respondent and none of the petitioners have completed 240 working days in any calendar year preceding their termination and proved the mandays charts Ex. RA, Ex. RB and Ex. RC of the petitioners.

10. Shri Rakesh Manta, Ld. Csl for petitioners has vehemently argued at the very outset that all the petitioners have completed 240 working days in twelve calendar months preceding their termination, who were illegally terminated from service without any reason and no notice nor compensation was paid to them at the time of their removal and as such they are also entitled for reinstatement with all consequential benefits.

11. On the contrary, Ms. Sharmila Patial, Ld. Counsel for the respondent controverted the arguments of Shri Manta and has submitted that the petitioners were never terminated from service, who left the job of their own and the petitioners have not completed 240 working days in twelve calendar months preceding their termination, hence the petitioners are not entitled to any relief as prayed by them.

12. I have considered the respective contentions of both the parties and have scrutinized the record of the case.

13. After the close scrutiny of the record of the case, it is pointed out that petitioner Shri Heera Pal did not file his claim but the other petitioners have claimed to have worked with the respondent for 240 working days in preceding twelve calendar months preceding their termination but there is nothing on record which could show that the petitioners have worked with the respondent for more than 240 days in each calendar year and also in twelve calendar months preceding their termination. Since the respondent has proved on record by examining RW-1 Er. J.S Rana, who has stated on oath that none of the petitioners has completed 240 working days in any calendar year preceding their termination, who has also proved the mandays chart of the petitioners Ex. RA to Ex. RC which clearly goes to show that the petitioners have not completed 240 working days of service with the respondent preceding their termination and since the petitioners have failed to prove on record that they had put in 240 working days in twelve calendar months preceding their termination, hence the case of the petitioners does not fall under section 25-F of the Industrial Disputes Act, 1947. Moreover, it is well settled that where the workman has not produced any evidence to show that he had worked for more than 240 working days in twelve calendar months preceding his termination and that no evidence has been led in order to show that their juniors are still working with the respondent, the petitioners are not entitled to any protection under the provisions of the Industrial Disputes Act, 1947. Here I am fortified with a view taken by their lordship of Hon'ble Supreme Court in AIR 2006 S.C. 110 case titled as Surindernagar District Panchyat V/s Dayabhai Amar Singh in which it was held that:-

“In case workman claims to have worked for more than 10 years as daily wager. Apart from oral evidence workman has not produced any evidence to prove fact that he has worked for 240 days. No proof of receipt of salary or wages or any record or order in that regard was produced: no co-worker was examined; muster roll produced by employer has not been contradicted. Workman has failed to discharge his burden that he was in employment for 240 days during preceding 12 months of date of termination of his service. Workman not entitled for protection of Section 25-F before his service was terminated.”

Thus, the petitioners are not entitled to any service benefits as they have failed to prove that they had worked for 240 days in twelve calendar months preceding their termination. Therefore, having regard to the entire evidence on record, it can safely be concluded that the petitioners have not completed 240 working days in twelve calendar months preceding their termination nor their juniors are proved to be continuing in service after their removal and obviously, therefore, it can safely be concluded that the services of petitioners have not been terminated wrongly and illegally by the respondent without complying the provisions of Industrial Disputes Act, 1947. Accordingly issue no.1 is decided in favour of respondent and against the petitioner.

Issue No. 2.

14. Since I have held under issue no. 1 above that the services of petitioners have not been terminated wrongly and illegally by the respondent under the provisions of Industrial Disputes Act, 1947, hence the petitioners are not entitled to any claim of service benefits, hence issue no.2 is decided in favour of respondent and against the petitioners.

Issue No. 3

15. In support of this issue, no evidence was led by the respondents nor it was pressed during the course of arguments. However, I find nothing wrong with this petition which is perfectly maintainable having enforceable cause of action to file this petition. Accordingly, issue no.3 is decided in favour of the petitioner and against the respondent.

Issue No. 4

16. In support of this issue, no evidence was led by the respondents nor it was pressed during the course of arguments. However, I find nothing wrong with this petition which is perfectly maintainable in the present form and there is no limitation under the provisions of Industrial disputes Act, 1947 as it was held by their lordship of Hon'ble Supreme Court reported in (1999) 6 SCC 82 case titled as Ajayab singh Vs. Sirhind Co-operative Marketing –cum– processing Service Society Limited and Another in which it was held that:-

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”

Accordingly, on the strength of this ruling, it can safely be concluded that there is no limitation under the Industrial Disputes Act, 1947 and as such this issue is decided in favour of petitioners and against the respondent.

RELIEF

As a sequel to my above discussion and findings on issues no.1 to 4, the claim of the petitioner fails and is hereby dismissed and the reference is ordered to be answered in negative. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced in the open court today on this day of 13th July, 2009 in the presence of parties counsels.

By order,
JAGMOHAN SINGH MAHANTAN
Presiding Judge.

IN THE COURT OF JAGMOHAN SINGH MAHANTAN, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL- CUM-LABOUR COURT, SHIMLA

Ref No. 240 of 2001.
Instituted on. 5.11.2001.
Decided on. 13.7.2009.

Kamla Devi W/o Shri Gopal Singh R/o Village Jhander, P.O Basantpur, Tehsil Sunni District Shimla, HP.
...Petitioner.

Vs.

The Conservator of Forests, Wild Life Division, Shimla HP.
...Respondent.

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner : Shri J.R. Sharma, Ld. Csl.
For respondent : Shri Jagdish Kanwar, Ld. DDA.

AWARD

1. The following reference has been received from appropriate government by this court for adjudication:

“Whether the statement of Dy. Conservator of Forests, Wild Life, Division, Shimla HP that Smt. Kamla Devi W/o Shri Gopal Singh has left the job w.e.f. 30.11.1995 at her own is fair and justified?? If not, what relief of service benefits, including back wages, seniority and compensation, the above worker is entitled?”

2. The petitioner has filed a statement of claim asserting therein that she was initially appointed as peon on daily wages basis in Jan. 1995 with the respondent and that after appointment, the petitioner worked continuously till March, 1996 and then she was terminated from service without assigning any reason by the respondent and that the petitioner had completed 240 days in calendar year and even also preceding year and that the petitioner had unblemished record of her service, who never gave an opportunity of complaint and that the petitioner made several requests seeking reemployment by visiting the office of the respondent number of times but she was assured that she would be called but the respondent chose not to offer the employment to the petitioner and that the respondent while terminating the services of the petitioner has grossly and palpably violated the well settled principle of law as well as sections 25F, 25G and 25H of the industrial Disputes Act, 1947 and that the respondent terminated the petitioner without serving notice and the respondent also failed to pay salary in lieu of notice and that the respondent never charge sheeted the petitioner before her termination and that the respondent after terminating the petitioner, recruited several fresh hands and never offered employment to the petitioner despite requests made by the petitioner and that the respondent is required to maintain the seniority of the workmen and to offer the employment and in case of the petitioner, the respondent has failed to discharge its duties and as such prayed for reinstatement in service with retrospective effect alongwith all consequential benefits of back wages, continuity, regularization, promotion and other allied service benefits, hence this claim.

3. The respondent resisted and contested the claim of the petitioner, which filed reply interalia raising preliminary objections that the petitioner was engaged on daily wages basis in Jan. 1995 to do forestry works which are

of seasonal nature and time bound in the foreign aided project called Eco-NORAD Project, who worked for 31 days in Jan. 1995, 28 days in Feb. 1995, 30 days in March, 1995, 14 days in April, 1995 and 30 days in November, 1995 and as such the petitioner worked for 133 days in the year 1995 and then she left the job of her own in November, 1995 and that the Project was closed in March, 2000 due to non availability of funds and that the petitioner did not complete 240 days in a calendar year, who never approached any officer regarding her reemployment as daily wager worker. On merits, it is contended that the petitioner never approached the respondent for her reengagement and her co-labourer worked as per need of the work till the closure of the NORAD Project in March, 2000 while petitioner left the job of her own after working for 133 days during the year 1995 and that there is no violation of section 25F, G & H of the Industrial disputes Act, 1947 and that the services of the daily wager casual labourer is not guided by the service rules, hence there is no question of serving any charge sheet to the petitioner and as such prayed for the dismissal of the claim petition.

4. In the rejoinder, the petitioner controverted the assertions made in the reply and reiterated and reaffirmed the averments of the petition.

5. The following issues were framed by this court on 7.3.2003 on the pleadings of the parties.

1. Whether services of the petitioner were terminated by the respondent in violation of sections 25F, 25g and 25H of the Industrial Disputes Act, 1947? ...OPP.
2. Whether the petitioner left the job w.e.f. 30.11.1995 at her own? ...OPR.
3. Relief.

6. I have heard the Ld. Counsel for petitioner and Ld. DDA for respondent and have gone through the record of the case.

7. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings on the aforesaid issues are as under:

Issue No. 1	No.
Issue No. 2	Yes.
Relief.	Reference answered in negative per operative part of award.

REASONS FOR FINDINGS

Issue No:1.

8. Coming to this issue, the petitioner has examined herself as PW-1, who has stated that she had joined the respondent as peon on daily wages in Jan. 1995 and worked as such till March, 1996, who was getting Rs. 27/- per day which was revised to Rs. 51/- per day and she was posted in the office of DFO Wild Life, Shimla at Khalini. She was carrying out the duties of a peon in the office and she was not deployed in the nursery or in any other field work, who was retrenched in March, 1996 without any notice and without compensation and she was assured that she would be reengaged after some time but she was not taken back in work and though she was retrenched, the department made fresh recruitments and Shri Ginder Singh, who was junior to her was retained and she was retrenched and S/Shri Jeet Ram, Surya Parkash and Ishwar Dass etc. were recruited by the department after she was retrenched and when she was recruited, she was not informed that she was being employed in the Project and she is now unemployed since her retrenchment and as such prayed for reinstatement along with consequential benefits including back wages.

9. To rebut the case of the petitioner, the respondent examined RW-1 Shri T.R Dhiman, ACF Sunder Nagar, who has stated that he remained as R.O Shimla in ECO Project aided by NORAD w.e.f. April, 1994 to sep. 1998. The petitioner was engaged as casual labour in Jan. 1995 at Shimla for development of parks, nurseries as per the need of work which was seasonal work and the NORAD Project was commissioned in April, 1994 and continued upto March, 2000 and the entire labour engaged in this project were automatically disengaged at the completion of the project due to non availability of funds. The petitioner had worked for 133 days w.e.f. Jan. 1995 to November, 1995, who had not completed 240 working days in any calendar year preceding her abandonment, who left the job in November, 1995 of her own and the petitioner never approached the department for her reengagement, who raised the dispute after the expiry of six years and proved the mandays chart of the petitioner Ex. RA and the petitioner was never engaged as peon by the department and no junior to the petitioner was ever engaged by the respondent.

10. The case of the petitioner is that she being a daily wager peon having worked for more than 240 days in a calendar year preceding her termination and even juniors to him are still working with the respondent and as such her termination without following the mandatory provisions of the industrial disputes Act, 1947 is illegal, hence she is entitled for reengagement with all benefits.

11. On the contrary, the respondent contends that the petitioner was engaged as daily wages casual labourer for seasonal work and for specified period, who was engaged according to need of work and subject to availability of funds, who had not completed 240 working days in any calendar year preceding her termination and no junior to the petitioner is working with the respondent, hence the petitioner is not entitled to any relief as prayed by her.

12. I have considered the respective contentions of both the parties and have scrutinized the record of the case.

13. After the close scrutiny of the record of the case, it remains a fact that the petitioner was engaged as daily wages beldar by the respondent but not as a daily wager peon as claimed by the petitioner, who had not worked with the respondent continuously as is evident from the mandays chart Ex. RA placed on record and as such it is clear that the petitioner had not worked with the respondent for 240 days in any calendar year and even in twelve calendar months preceding her termination, hence the case of the petitioner does not fall under section 25-F of the Act. It is well settled that where the workman has not produced any evidence to show that she had worked for more than 240 working days preceding her termination and that no evidence has been led in order to show that her juniors are still working with the respondent, the petitioner is not entitled to any protection under the provisions of the Industrial Disputes Act, 1947. Here I am fortified with a view taken by their lordship of Hon'ble Supreme Court in AIR 2006 S.C. 110 case titled as Surindernagar District Panchyat V/s Dayabhai Amar Singh in which it was held that:-

"In case workman claims to have worked for more than 10 years as daily wager. Apart from oral evidence workman has not produced any evidence to prove fact that he has worked for 240 days. No proof of receipt of salary or wages or any record or order in that regard was produced: no co-worker was examined; muster roll produced by employer has not been contradicted. Workman has failed to discharge his burden that he was in employment for 240 days during preceding 12 months of date of termination of his service. Workman not entitled for protection of Section 25-F before his service was terminated."

Now, turning to the other aspect of the case, the petitioner has tried to establish on record that she was engaged as daily wages peon by the respondent but there is nothing on record which could show that the petitioner was engaged as daily wages peon. On the other hand, respondent has proved on record that the engagement of the petitioner was purely on seasonal work on the availability of the work and funds as daily wages beldar, hence the services of the petitioner stood automatically dispensed with. Moreover, it is well settled in (2006) 6 SCC 221, case titled as Reserve Bank of India V. Gopinath Sharma & Anr. In which it was held that :-

"Workman not appointed to any regular post but engaged on the basis of need of work on day to day basis, held, had no right to the post."

14. Similarly in 2006 (2) SCC 794 in case titled as Haryana State Agricultural Marketing Board V. Subhash Chand & Anr. in which it was held that:-

"If nature of service does not come within purview of definition of retrenchment in section 2(oo), question of applicability of section 25-G does not arise. Bare perusal of offer of appointment (set out in para 2 herein) clearly shows that respondent was appointed on seasonal contracts. Hence, respondent not having been reengaged on expiry thereof, he was not retrenched within meaning of section 2(oo), and his case fell exception in section 2(oo)(bb). Hence, section 25-G was inapplicable in his case and dispensing with engagement of respondent cannot be said to be unwarranted in law."

15. Apart from it was further held incase titled as Punjab State Electricity Board V. Darbara Singh reported in 2006 LLR 68 SC. and incase titled as Municipal Council Samrala V. Surhwinder Kaur reported in 2006 LLR 1009 SC. In which it was held that:-

"material on record established that engagement of workman was for specific period and as such his termination will be excluded as per the provisions of section 2(oo)(bb) of the I.D Act and hence, no retrenchment compensation will be payable on his termination even when he has worked for more than 240 days in the preceding 12 calendar months."

16. Now, turning to the other aspect of the case, the petitioner also tried to establish on record that her juniors are still continuing with the respondent department but she did not prove on record that on which date they joined the department and infact they are juniors to the petitioner. On the other hand, the respondent has proved on record that the petitioner was engaged as casual labourer in NORAD Project which was foreign aided project which came to an end in March, 2000 but the petitioner had failed to report for duties, who left the job in November, 1995 and further the petitioner was engaged for specific work and for specific time as per the need of the work and as such it does not lie in the mouth of petitioner to claim any right over the post which was offered to her for specific period and for specific

work and therefore, the case of petitioner cannot be accepted for her reinstatement keeping in view the entire facts and circumstances of the case.

17. Thus, on the strength of the above cited rulings and having regard to the evidence on record, it can safely be concluded that the services of the petitioner were not terminated by the respondent in violation of sections 25F, 25G & 25H of the Industrial Disputes Act, 1947 and rather the petitioner was engaged as casual labourer for seasonal work and for specific period. Accordingly, this issue is decided in favour of the respondent and against the petitioner.

Issue No. 2.

18. Since, I have held under issue no.1 above, that the petitioner had worked for 133 days with the respondent in the year 1995 and thereafter she did not report for her duties. It is significant to note that the petitioner remained silent for six years for the reasons best known to her and this NORAD Project came to an end in March, 2000 and it stands proved on record that the petitioner left the job of her own w.e.f. 30.11.1995 and thereafter she did not take any steps to resume her duties with the respondent. Accordingly, the issue no.2 is decided in favour of respondent and against the petitioner holding that the petitioner herself left the job on 30.11.1995.

RELIEF

As a sequel to my above discussion and findings on issue no.1 & 2, the claim of the petitioner fails and is hereby dismissed and the reference is ordered to be answered in negative. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced in the open court today on this day of 13th July, 2009 in the presence of parties.

By order,
JAGMOHAN SINGH MAHANTAN
Presiding Judge.

IN THE COURT OF JAGMOHAN SINGH MAHANTAN, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL- CUM-LABOUR COURT, SHIMLA

Ref No. 402 of 2002.
Instituted on. 31. 12.2002
Decided on. 13.7.2009.

Sanjay Kumar S/o Shri Kashmir Singh R/o Village Kalash, P.O & Tehsil Sarkaghat, District Mandi, HP.
...Petitioner.

Vs.

1. The Block Development Officer, Sangrah, District Sirmour, HP.
2. The Block Development Officer, Shillai, District Sirmour, HP. *...Respondents.*

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner : Shri J.L Sharma, Ld. Csl.
For respondent : Shri Jagdish Kanwar, Ld. DDA.

AWARD

1. The following reference has been received from appropriate government by this court for adjudication:

“क्या श्री संजय कुमार सुपुत्र श्री कश्मीर सिंह दैनिक वेतन भोगी कनिष्ठ अभियन्ता को खण्ड विकास अधिकारी, संगडा, जिला सिरमौर द्वारा औद्योगिक विवाद अधिनियम, 1947 में दिए गए प्रावधानों की अनुपालना किए बिना दिनांक 1-9-200 से नौकरी से निकालना व उनके स्थान पर दो अन्य कनिष्ठ अभियन्ता कामगारों को अनुबन्ध आधार पर नियुक्त करना उचित व न्याय संगत है ? यदि नहीं, तो कामगार किस राहत सेवा लाभों का पात्र है ?”

2. The petitioner has filed a statement of claim asserting therein that the petitioner is a qualified Civil Engineer having passed Diploma in Civil Engineering in 2nd division from the Board of technical education, Delhi

during the year 1991 and that the petitioner had acquired working experience of over five years by working with a number to engineering concerns and that being a bonafide Himachali, the petitioner had a strong desire to serve his own State and was able to realize his cherished dream when he landed a Junior Engineer job in the office of Block Development Officer, Shillai, district Sirmour, HP on daily wages basis where the petitioner joined as such on 5.8.1998 and worked for 246 days continuously as per mandays chart and certificate issued by the Assistant Commissioner-cum BDO Shillai and that the petitioner had been discharging his duties honestly and diligently to the entire satisfaction of his superiors and that on 1.8.1999, the petitioner was transferred from the office of BDO Shillai to the office of respondent no.1 where the petitioner had been discharging his duties to the best of his ability and capacity to the entire satisfaction of his superiors and that the petitioner was allowed to make entries in the measurement book, to recommend payments and to prepare utilization certificate as is evident from the letters dated 3.2.2000 and 17.2.2000 and that on 5.4.2000, the services of the petitioner were terminated even though there was nothing against him, who had completed more than 240 working days and another J.E was engaged on contract basis in place of the petitioner and that the action of the respondents in terminating the services of the petitioner is arbitrary, malafide and against the principle of natural justice and that the state Govt. vide letter no. 3-2/99.DA/1876-1888 circulated to all the Deputy Commissioners in the State admitted that it may not be possible to remove such JEs etc. and that the action of the respondent smacks of legal malafides and that the services of the petitioner have been dispensed with, with the ulterior motive of depriving him of the valuable constitutional right and that the respondents are liable to reengage the services of the petitioner from the date of completion of 240 days service and that the petitioner had filed an Original application before the Administrative Tribunal which was dismissed having no jurisdiction and as such prayed for reinstatement as J.E on daily wages basis, regularization, back wages with interest @15% , hence this claim duly supported by an affidavit.

3. The respondents resisted and contested the claim of the petitioner, which filed reply interalia raising preliminary objections of maintainability, petition is bad for misjoinder of facts as there remains three regular sanctioned posts of JEs in the office of the respondent no.1 but there is only one post of regular J.E against the sanctioned posts and the services of the petitioner were engaged on 20.8.1999 and was allowed to do the job of J.E. There were 30 regular posts of JEs lying vacant in different blocks of the state under the department of which two posts were in the respondent department and in October, 1999, the state government had decided to fill up these vacancies by appointing JEs on contractual basis in place of these vacant posts through concerned Panchayat Samities by the Rural Development Department and the posts are filled up by a selection committee for which the petitioner was also an aspirant, who appeared in the interview on 14.12.1999 alongwith 13 other candidates but the petitioner was not selected and that due to filling up of vacancies and non availability of work for the petitioner, the services of the petitioner were essentially to be dispensed with on 5.4.2000 and that the petitioner appointed as J.E on contract basis since August, 2002 for implementation of water shed works. On merits, it is contended that the petitioner had worked as daily waged J.E under the respondent no.1 w.e.f. 20.8.1999 to 31.7.2001 and further upto 30.4.2002 as per interim orders of Administrative Tribunal. It is denied that the petitioner had been discharging his duties honestly and diligently to the entire satisfaction of his superiors. It is contended that the services of the petitioner had been observed as irregular whose explanation was called by the respondent no.1 vide letter dated 31.10.2000 and the second explanation was called for on 4.4.2001 for being absent from duty and that the petitioner was not issued any measurement book and that the services of the petitioner were dispensed with after complying with the provisions of section 25F of the Industrial disputes Act, 1947 and compensation of Rs. 3675/- was also paid to the petitioner and as such prayed for the dismissal of the claim.

4. In the rejoinder, the petitioner controverted the assertions made in the reply and reiterated and reaffirmed the averments of the petition.

1. The following issues were framed by this court on 12.8.2005 on the pleadings of the parties.

1. Whether the termination of the service of the petitioner by respondent w.e.f. 1.9.2001 without complying the provisions of Industrial Disputes Act, 1947 and appointing the fresh workers on contract basis is legal and justified? ...OPR.
2. If issue no.1 is not proved in affirmative, to what relief and service benefits, the petitioner is entitled to? ...OPP.
3. Whether the respondent has complied with the provisions of I.D Act, while terminating the services of the petitioner as alleged in preliminary objection no.3? ...OPR.
4. Whether the reference/petition is bad for misjoinder of facts? ...OPR.
5. Relief.

6. I have heard the Ld. Counsel for the petitioner and Ld. DDA for respondent and have gone through the record of the case.

7. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings on the aforesaid issues are as under:

Issue No. 1	Yes.
Issue No. 2	Entitled for reinstatement in service with seniority and continuity but without back wages.
Issue No. 3	Not in accordance with the I.D. Act, 1947.
Issue No. 4	No.
Relief.	Reference answered in affirmative per operative part of award.

REASONS FOR FINDINGS

Issue No. 1 & 3.

8. Both these issues are taken up and discussed together being interlinked and interconnected for the sake of convenience and to avoid repetition. Coming to these issues, the respondents have examined three RWs in all. RW-1 Shri Vijay Kumar Sharma, BDO Sangrah has stated that he is posted as BDO since Sept. 2006 and is well conversant with the facts of the case. The petitioner was engaged as J.E on daily wages in August. 1999 and in October, 1999, the state government has directed that the J.Es should be appointed by Panchayat Samities on contract basis and there were three posts of J.Es at that time and two were lying vacant and one post was occupied by the regular J.E who was on deputation from HPPWD and after the government directions, the interview was conducted by the Panchayat Samiti on 14.12.1999. The petitioner also appeared in the interview but could not qualify the same and thereafter no post was lying vacant and as per directions of the Administrative Tribunal, the petitioner was reengaged and in July, 2001, the PAC during its inspection observed that no J.E can be engaged against contingency fund as there is no provision for contingency fund, who also directed that no BDO should engage any person against the contingency and the direction is Ex. RA. There was no fund or vacancy available, hence the services of the petitioner were terminated in accordance with law after serving notice under section 25F of the I.D Act and also paid the compensation as per Ex. RB but the petitioner deposited the money of compensation in the account of BDO. The amount of one month's salary and compensation has been deposited by the petitioner as per deposit receipt dated 31.8.2001 and a letter Ex. RC. He called the explanation of the petitioner as he deposited the amount on behalf of the BDO but no reply to the explanation has been submitted by the petitioner and the copy of letter/explanation is Ex. RD. The petitioner was accommodated by the department and he was working in the water shed project at Rajgarh. The petitioner left the job and joined IPH at Ani. The petitioner is not entitled to any relief as he has been removed in accordance with law.

9. RW-2 Shri Dina Nath, Supdt. Grade-II, IPH Department, Ani has stated that the petitioner was engaged as J.E on 15.6.2005 at Anni on contract basis and proved the copy of appointment letter Ex. RW-2/A and the petitioner has joined on 15.6.2005 as per Ex. RW-2/B and the petitioner was disengaged on 15.6.2005 but again engaged on 10.4.2006 and the joining report dated 1.5.2006 is Ex. RW-2/C.

10. RW-3, Shri Bir Singh, Supdt. in the office of BDO Sangrah has stated that the petitioner was engaged as daily wager J.E in the office of BDO on 20.8.1999 and continued as such till August, 1999. Notice was served upon the petitioner under section 25F of the I.D Act, 1947 when his services were dispensed with and the copy of which is Ex. RB. The compensation was paid to the petitioner which was received by the petitioner without protest, who withdrew the compensation amount and subsequently deposited the same in the account of BDO without his permission, the copy of which is Ex. RC and then the explanation of the petitioner was called per Ex. RD.

11. To prove his case, the petitioner stepped into the witness box as PW-1, who has stated that he was engaged as Junior Engineer on daily wages on August, 1998 with the respondent at Shillai, District Sirmour, HP where he worked till July, 1999 and his mandays certificate of having worked at Shillai Block is mark X, who had worked for more than 240 working days in each calendar year preceding his termination and on 19.8.1999, he was transferred from Shillai to Sangrah and on 20.8.1999, he joined at Sangrah where he worked till July 2002 and when his services were terminated on April, 2000, he preferred a petition before Administrative Tribunal which granted stay in his favour but despite having issued stay, he was removed from service after one year i.e in the year 2001 in utter disregard of the instructions passed by the government vide letter dated 13th July, 2001 Ex. RA whose mandays chart of Sangrah block is Ex. PA. the Director R.D vide letter dated 12th October, 1999 issued direction for filling up of vacant post of Junior Engineers on contract basis by Panchayat Samities as per mark Y but despite these instructions, government policy and stay granted by the Administrative Tribunal, his services were terminated by the respondent for the reasons best known to it. The respondent served a notice for retrenchment under section 25F alongwith cheque of one month salary including his previous salary to him, who was not paid entire salary for four years and instead he was paid a salary of two years without any basis and as such prayed for reinstatement with seniority and continuity in service alongwith back wages.

12. Shri J.L. Sharma, Ld. Counsel for petitioner has vehemently argued at the very outset that the petitioner was terminated from service without valid notice and without payment of proper compensation as the petitioner has put in four years of service but only compensation of one month's pay was paid which was returned to the respondent under protest by depositing the same in the government Treasury and since the respondent has failed to comply with the mandatory provisions of law as envisaged under section 25F of the Industrial Disputes Act, 1947, hence the petitioner is entitled to be reengaged in service with seniority, continuity and back wages alongwith all consequential benefits.

13. Shri Jagdish Kanwar, Ld. DDA for respondent has controverted the arguments of Shri Sharma and has submitted that the respondent has complied with the provisions of section 25F of the Industrial disputes Act, 1947 alongwith compensation of one month's in lieu thereof and as such the petitioner is not entitled to any service benefits as prayed by him.

14. I have considered the respective contentions of both the parties and have scrutinized the record of the case.

15. After the close scrutiny of the record of the case, it remains a fact that the petitioner was engaged as J.E on daily wages basis on August, 1998 who worked till July, 1999 at Shillai, District Sirmour and then on 19.8.1999, the petitioner was transferred from Shillai to Sangrah where he worked till July, 2002 and as such it is clear that the petitioner has put in more than four years of service continuously with the respondent department. It is borne out from the record that the respondent has served a notice alongwith compensation of one month's salary in lieu thereof under section 25F of the Industrial Disputes Act, 1947 and the compensation of one month's salary was deposited by the petitioner in the government Treasury under protest. It is crystal clear that while terminating the services of the petitioner workman, the respondent has to serve the notice alongwith compensation in lieu thereof of average salary keeping in view the years put in by the workman and since the petitioner has worked for more than four years with the respondent department and as such the respondent has failed to pay the requisite and legal compensation under the law to the petitioner alongwith notice and therefore it does not lie in the mouth of the respondent to say that they had complied with the mandatory provisions of section 25F of the Industrial disputes Act, 1947 especially when the respondents failed to comply with the mandatory provision of law by not depositing the legal compensation to the petitioner at the time of his retrenchment. It is fully proved on record that the petitioner had completed 240 working days in a calendar year preceding his termination and his termination without proper notice and without proper compensation is bad in law. **Section 25-F of the 'Act' provides that:**

25-F. CONDITIONS PRECEDENT TO RETRENCHMENT OF WORKMEN.- No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;
- (b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent of fifteen days' average pay (for every completed year of continuous service) or any part thereof in excess of six months; and
- (c) notice in the prescribed manner is served on the appropriate government (or such authority as may be specified by the appropriate Government by notification in the Official Gazette.)

16. In the instant case, the respondent has failed to comply with the provisions of section 25F properly which has not served the legal notice on the appropriate government by notification in the official gazette as envisaged under section 25F © of the Industrial Disputes Act, 1947 and thus, having regard to the entire evidence on record, I am of the firm view that the termination of the services of the petitioner by respondent w.e.f. 1.9.2001 without complying with the provisions of the Industrial disputes Act, 1947 and appointing the fresh workers on contract basis is held illegal and unjustified. Accordingly, both these issues are decided in favour of the petitioner and against the respondent holding that the respondent has failed to give the proper notice and compensation under section 25F of the Industrial disputes Act, 1947.

Issue No. 2.

17. Since I have held under issue no. 1 & 3 above, the services of petitioner have been illegally terminated by the respondent without serving proper notice under section 25F of the Industrial Disputes Act, 1947, hence the petitioner is held entitled to his reinstatement in service alongwith seniority and continuity. However, the petitioner is

not entitled to back wages as he has not placed any material on record to substantiate that he was not gainfully employed after his termination. Accordingly, issue no.2 is decided in favour of the petitioner and against the respondent.

Issue No. 4

18. In support of this issue, no evidence was led by the respondents nor it was pressed during the course of arguments. However, I have scrutinized the evidence on record and found that the respondent could not place on record as to which are the facts unnecessarily mentioned by the petitioner in his claim petition. Accordingly, issue no.4 is decided in favour of the petitioner and against the respondent holding that the reference/petition is not bad for misjoinder of facts.

RELIEF

As a sequel to my above discussion and findings on Issue no.1 to 4, the claim of the petitioner succeeds and is hereby allowed as a result of which retrenchment notice under section 25F of the Industrial Disputes Act, 1947 issued by the respondent is hereby quashed and set aside and the petitioner is ordered to be reinstated in service with seniority and continuity from the date of his illegal termination but without back wages as the petitioner has not placed any material on record to substantiate that he was not gainfully employed after his termination and as such the reference is ordered to be answered in affirmative. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced in the open court today on this day of 13th July, 2009 in the presence of parties.

By order,
JAGMOHAN SINGH MAHANTAN
Presiding Judge.

IN THE COURT OF JAGMOHAN SINGH MAHANTAN, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT, SHIMLA, HP AT CAMP COURT SOLAN.

Ref no. 96 of 2005.
Instituted on 2.12.2005.
Decided on. 14.7.2009.

Sat Dev Yadav C/o Shri Satish Kumar, Branch Secy. HP AITUC, Near State Bank of Patiala, Baddi,
District Solan, HP. *...Petitioner.*

Vs.

The Manager Sunil & Company, Plot no.90 Industrial Area Baddi, Distt. Solan HP. *...Respondent.*

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner : Shri J.C Bhardwaj, Ld. AR
For respondent : Already exparte.

AWARD

1. The following reference has been received from appropriate government by this Court for adjudication:

“Whether the termination of Shri Sat Dev Yadav workman by the Manager Sunil & Company, Plot no.90 Industrial Area, Baddi, District Solan, HP w.e.f. 11.5.2003 without complying the provisions of the Industrial Disputes Act, 1947 is proper and justified? If not, to what relief of service benefits and amount of compensation, the above aggrieved workman is entitled?”

2. The respondent was served but did not put in appearance, hence proceeded against exparte.

3. The petitioner has filed a claim asserting therein that he was appointed as worker in the employment of the respondent during the month of November, 2000 and remained as such till 11.5.2003 and then he was illegally

terminated from service without any cogent reason or justification by way of illegal oral orders and that the services of the petitioner for the purpose of section 25B of the Act were continuous as he has worked for more than 240 days in the employment of the respondent in each year and that the respondent could not have automatically retrenched the petitioner unless there has been a cogent reason for such retrenchment and that the petitioner caused heavy damages to the petitioner in the social status as well as of monetary benefits and that the termination of the services of the petitioner is invalid, nonest in the eyes of law due to non compliance of mandatory provisions of section 25F of the Industrial disputes Act, 1947 and that the petitioner is unemployed after his termination and as such prayed for reinstatement with full back wages, seniority and other consequential service benefits with costs, hence this claim.

4. The petitioner in his exparte evidence has examined himself as PW-1, who appeared in the witness box and stated that he was appointed with the respondent as a worker in November, 2000 and continued as such upto 11.5.2003 and then he was orally terminated by the respondent without any notice or compensation, who had worked for more than 240 days in every calendar year and also in twelve calendar months preceding his termination. No chargesheet was served upon him nor any enquiry was held. He is not employed anywhere since his termination and as such prayed for reinstatement in service alongwith all consequential benefits including back wages, seniority and continuity in service.

5. Shri J.C Bhardwaj, Ld. AR for the petitioner has vehemently argued at the very out set that there is ample evidence on record to show that the petitioner was shunted out from service without any notice, compensation, charge sheet and domestic enquiry. He has further urged that since the respondent company is closed, hence the petitioner is entitled to lump sum compensation in the interest of justice and fair play.

6. I have considered the respective contention of the petitioner and have scrutinized the record of the case.

7. After the close scrutiny of unrebutted exparte evidence on record, I am satisfied that the petitioner was engaged as workman on daily wages by the respondent in November, 2000, who continued as such upto 11.5.2003 and thereafter the petitioner was terminated from service without notice, compensation, charge sheet and without conducting any enquiry and therefore, on the basis of unrebutted exparte evidence on record I am satisfied that the petitioner was terminated from service by the respondent without notice and without payment of compensation and without following the mandatory provisions of Industrial disputes Act, 1947 as no opportunity of being heard was afforded to the petitioner which amounts to unfair labour practice. Thus, the claim of the petitioner is allowed exparte and since the respondent company is stated to have been closed, hence a lump sum amount of Rs. 25,000/- (Twenty Five Thousand only) as compensation is granted in favour of the petitioner and against the respondent company and as such the respondent company is directed to pay the amount of Rs. 25,000/- (Twenty Five Thousand only) to the petitioner forthwith and as such the reference is ordered to be answered in affirmative. Let a copy of this award be sent to the appropriate government for its publication in official gazette. File, after completion, be consigned to records.

Announced in the open court today on this day of 14th July, 2009 in the presence of petitioner AR.

By order,
J. S. MAHANTAN,
Presiding Judge.

**IN THE COURT OF JAGMOHAN SINGH MAHANTAN, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT, SHIMLA, HP AT CAMP COURT SOLAN**

Ref no. 97 of 2005.
Instituted on 2.12.2005.
Decided on. 15.7.2009.

Jagdev Pal C/o Shri Satish Kumar, Branch Secy. HP AITUC, Near State Bank of Patiala, Baddi, District Solan, HP. ...Petitioner.

Vs.

The Manager, Sunil & Company, Plot no.90 Industrial Area Baddi, Distt. Solan HP.

...Respondent.

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner : Shri J.C Bhardwaj, Ld. AR
 For respondent : Already exparte.

AWARD

1. The following reference has been received from appropriate government by this Court for adjudication:

“Whether the termination of Shri Jagdev Pal workman by the Manager Sunil & Company, Plot no.90 Industrial Area, Baddi, District Solan, HP w.e.f. 1.8.2003 without complying the provisions of the Industrial Disputes Act, 1947 is proper and justified? If not, to what relief of service benefits and amount of compensation, the above aggrieved workman is entitled?”

2. The respondent was duly served but did not put in appearance, hence proceeded against exparte vide order dated 6.11.2007.

3. The petitioner has filed a claim asserting therein that he was appointed as helper in the employment of the respondent on 17.11.2000 and remained as such till 1.8.2003 and then he was illegally terminated from service without any cogent reason or justification by way of illegal oral orders and that the service of the petitioner for the purpose of section 25B of the Act was continuous as he has worked for more than 240 days in the employment of the respondent in each year and that the respondent could not have automatically retrenched the petitioner unless there has been a cogent reason for such retrenchment and that the petitioner caused heavy damages to the petitioner in the social status as well as of monetary benefits and that the termination of the services of the petitioner is invalid, nonest in the eyes of law due to non compliance of mandatory provisions of section 25F of the Industrial Disputes Act, 1947 and that the petitioner is unemployed after his termination and as such prayed for reinstatement with full back wages, seniority and other consequential service benefits with costs, hence this claim.

4. The petitioner in his exparte evidence has examined himself as PW-1, who appeared in the dock and stated that he was appointed with the respondent as a worker in November, 2000 and continued as such upto 1.8.2003 and then he was orally terminated by the respondent without any notice or compensation, who had worked for more than 240 days in every calendar year and also in twelve calendar months preceding his termination. No chargesheet was served upon him nor any enquiry was held. He is not employed anywhere since his termination and as such prayed for reinstatement in service alongwith all consequential benefits including back wages, seniority and continuity in service.

5. Shri J.C Bhardwaj, Ld. AR for the petitioner has vehemently argued at the very out set that there is ample evidence on record which could show that the petitioner was shunted out from service without any notice, compensation, charge sheet and domestic enquiry. He has further argued that since the respondent company is closed, hence the petitioner is entitled to lump sum compensation.

6. I have considered the respective contention of the petitioner and have scrutinized the record of the case.

7. After the close scrutiny of unrebutted exparte evidence on record, I am satisfied that the petitioner was engaged as helper on daily wages by the respondent in November, 2000, who continued as such upto 1.8.2003 and thereafter the petitioner was terminated from service without notice, compensation, charge sheet and without conducting any enquiry, who has completed 240 working days in twelve calendar months preceding his termination and therefore, on the basis of unrebutted exparte evidence on record and as such it is clear that the petitioner was terminated from service by the respondent without notice and without payment of compensation and without following the mandatory provisions of Industrial disputes Act, 1947 as no opportunity of being heard was afforded to the petitioner which amounts to unfair labour practice. Thus, the claim of the petitioner is allowed exparte. Since the respondent company is stated to have been closed, hence it is expedient fair and reasonable to grant a lump sum amount of Rs. 25,000/- (Fifteen Thousand only) as compensation to the petitioner from the respondent and as such the respondent company is directed to pay the amount of Rs. 25,000/- to the petitioner and as such the reference is ordered to be answered in affirmative. Let a copy of this award be sent to the appropriate government for its publication in official gazette. File, after completion, be consigned to records.

Announced in the open court today on this day of 15th July, 2009 in the presence of petitioner AR.

By order,
 J. S. MAHANTAN,
 Presiding Judge.

**IN THE COURT OF JAGMOHAN SINGH MAHANTAN, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT, SHIMLA, HP AT CAMP COURT SOLAN**

Ref.114/2007

16.6.2009

Sh. Chajju Ram

V/s

G. M. M/s. Surita Ind. Nalagarh, Distt Solan.

Present:-None for the petitioner.

Sh Imran Khan, Ld.vice Csl, for respondent.

It is 3.55 P.M. Case is called out in the pre and post lunch sessions but none appeared on behalf of the petitioner. I am satisfied that proper service has been affected on the petitioner but it seems that the petitioner is not interested to pursue his case. Accordingly, the claim of the petitioner is dismissed in default and the reference is ordered to be answered accordingly. Let a copy of this order be sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced.

16.7.2009

By order,
Sd/-
Presiding Judge.

**IN THE COURT OF JAGMOHAN SINGH MAHANTAN, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT, SHIMLA.**

Ref no. 80 of 2005.

Instituted on. 25.8.2005

Decided on. 16.7.2009.

Tulsi Ram S/o Shri Shiv Dutt R/o Village Dhanlag, P.O Bharla, Tehsil & District Mandi HP. ...Petitioner.

Vs.

1. The Director of Industries, Himachal Pradesh, Shimla 171001.

2. State Geologist, Himachal Pradesh, Shimla 171001.

...Respondents.

Reference under Section 10 of the Industrial Disputes Act, 1947.

For petitioner : Shri J.R Sharma, Ld. Csl.

For respondent : Shri Jagdish Kanwar, Ld. DDA.

AWARD

1. The following reference has been received from appropriate government by this court for adjudication:

“Whether the termination of the services of Shri Tulsi Ram S/o Shri Shiv Dutt, Ex daily wages driver by (1) the Director of Industries, HP, Shimla-1 (2) the State Geologist, HP, Shimla-1 w.e.f. 24.5.1993 without complying the provisions of the Industrial disputes Act, 1947 is proper and justified? If not, what relief of service benefits and amount of compensation, the above workman is entitled to?”

2. The petitioner has filed a statement of claim asserting therein that he was appointed as daily rated driver w.e.f. 4.1.1990 with the respondents and that the petitioner worked under respondent no.2 till 25.5.1993 and then the services of the petitioner were illegally terminated by the respondents and when the petitioner was appointed as daily

wages driver w.e.f. 4.1.1990, he continued to serve with the respondents till 7.2.1991 and then the services of the petitioner were ordered to be terminated orally, illegally, arbitrarily by the respondent w.e.f. 8.2.1991 and the respondent no.2 straight way refused to the petitioner that his services are no more required and then the petitioner preferred an O.A (Original Application) before the Administrative Tribunal which ordered for reinstatement of the petitioner and as such the petitioner continued with the respondents till 25.5.1993 and that the action of the employer concern is totally against the settled position of law as the services of the petitioner have been terminated unlawfully, illegally and without complying with the provisions of section 25F, 25G and 25H of the Industrial Disputes Act and that the employers have not issued one month prior notice of termination to the petitioner and that the respondents never chargesheeted the petitioner before the termination and that the respondents have also failed to tender retrenchment compensation on account of service rendered by the petitioner and that the respondents after termination of the petitioner recruited several fresh hands and never offered employment to the petitioner despite his requests and that the respondents are required to maintain the seniority of the workman and offer employment and the petitioner is not gainfully employed and as such prayed for reinstatement with consequential benefits alongwith back wages, continuity, regularization and promotion, hence this claim.

3. The respondents resisted and contested the claim of the petitioner, which filed reply interalia raising preliminary objections of maintainability, estoppel and the respondent department is not an industry. On merits, it is contended that the petitioner was initially engaged as driver in the Department of Industries, Geological Wing in the year 1990 purely on daily wages basis on the retirement of the driver till the regular post was filled up and that vacant post of the driver against which the petitioner was engaged in the Geological Wing, industries Department was filled up by adjustment from amongst the surplus driver within the department in the year 1991, hence the stop gap arrangement was discontinued and the services of the petitioner were no longer required and the petitioner filed an O.A before the Administrative Tribunal which ordered for reinstatement of the petitioner, who was reengaged in compliance of the orders passed by the Administrative Tribunal and all the back wages had also paid to the petitioner and that the petitioner was engaged verbally as a driver and that the services of the petitioner were terminated in view of the orders vacated by the Administrative Tribunal HP and that the provisions of Industrial disputes Act, 1947 are not applicable in this case as the petitioner is not a workman as defined in the Act. It is denied that no appointment of drivers on daily wages has been made in the department after the termination of the services of the petitioner and the officials who were working as peon-cum-driver were regularized to the post of driver. It is also contended that Shri Ravi Singh was appointed as Driver on 1.1.1997 on regular basis after requisitioning the name of the candidates from the Employment Exchange against the post reserved for scheduled caste category and that the department has not maintained any seniority list of daily wagers driver as there was no other driver working on daily wages basis in the department and as such prayed for the dismissal of the petition.

4. In the rejoinder, the petitioner controverted the assertions made in the reply and reiterated and reaffirmed the averments of the petition.

5. The following issues were framed by this court on 26.3.2007 on the pleading of the parties:—

1. Whether the service of the petitioner has been illegally terminated by the respondent without complying with the provisions of Industrial Disputes Act, 1947? If so, its effect? ...OPP.
2. If issue no.1 is proved in affirmative, to what relief, the petitioner is entitled to? ...OPP.
3. Whether the petition is barred by limitation? ...OPP.
4. Whether the respondent department is not an industry and the petition is not maintainable? ...OPP.
5. Relief.

6. I have heard the Ld. Counsel for petitioner and Ld. DDA for respondents and have gone through the record of the case.

7. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings on the aforesaid issues are as under:

Issue no.1	No.
Issue no.2	Not entitled to any relief.
Issue no.3	No.
Issue no.4	No.
Relief.	Reference answered in negative per operative part of award.

REASONS FOR FINDINGS

Issue No:1.

8. Coming to this issue, the petitioner has examined himself as PW-1, who has stated that he was engaged as daily paid driver by the respondents on 4.1.1990 as per Ex. PA & PB, who worked under respondents for 3½ years whose services were terminated on 25.5.1999, who worked for more than 240 days in the preceding year. No notice nor retrenchment compensation was paid to him at the time of his removal and the persons, who were working with him are still in service, who approached the department for his reengagement but they refused to accommodate him, who approached the Administrative Tribunal against termination orders which granted stay and permitted him to join his duties and the stay was vacated after two years and he withdrew the case from the Tribunal in August, 1993 and he is plying private bus after his termination and as such prayed that his petition be allowed and he be reinstated in service.

9. To rebut the case of the petitioner, the respondents have examined Shri Bhoop Ram as RW-1, who has stated that he is posted as Senior Assistant with Director of Industries HP Shimla since 1987 and is well conversant with the facts of the case. The petitioner was engaged as daily wages driver in Jan. 1990 on stop gap arrangement due to the retirement of driver Shri Pratap Singh, who continued as such till 7.2.1991 and the petitioner was engaged orally and it was conveyed to him that he would be discharged after the appointment of regular driver. The petitioner also preferred the petition before Administrative Tribunal, who obtained stay and subsequently the stay was vacated on 11.5.1993 and his petition was also dismissed and the petitioner was paid the entire wages for the period he put in his service and no junior to the petitioner was engaged by the respondent.

10. The case of the petitioner is that he being the daily wages Driver having completed 240 working days in each calendar year and also in twelve calendar months preceding his termination was illegally terminated from service without any reason and no notice nor compensation was paid to him at the time of his removal and as such he is entitled for reinstatement with all consequential benefits.

11. On the contrary, the respondents contend that the petitioner was appointed as daily wages driver on stop gap arrangement after the retirement of regular driver and the petitioner was engaged orally with the clear direction that he would be discharged after the appointment of regular driver, hence the petitioner is not entitled to any relief as claimed by him.

12. I have considered the respective contentions of both the parties and have scrutinized the record of the case.

13. After the close scrutiny of the record of the case, it remains a fact that the petitioner was engaged by the respondents as driver on daily wages basis w.e.f Jan. 1990 to 7.2.1991 and thereafter the petitioner preferred an O.A (Original Application) before the Administrative Tribunal which granted stay in favour of the petitioner and the petitioner was reengaged in service and continued as such till 11.5.1993 when the order was vacated by the Administrative Tribunal and his petition was dismissed. It is significant to note that the petitioner had worked with the respondent department from 4.1.1990 to 7.2.1991 and then his services were terminated w.e.f. 8.2.1991 and then the petitioner preferred an O.A no. 310/1991 before the State Administrative Tribunal and vide order dated 24.7.1991 the petitioner was reinstated and was ordered to join his duties in the same capacity and place on which he was working but the petitioner was not allowed to join his duties, who filed contempt application no. 39/1991 against the respondent and then the petitioner reported for duty with the respondent no.2 and continued his services with the respondents till May, 25, 1993. It is significant to note that the petitioner has not placed his mandays chart on record nor the official of respondents alongwith the record was summoned to prove on record the mandays chart of the petitioner. The claim of the petitioner has been controverted by the respondents in their reply by stating that the petitioner had worked only for 128 days in the year 1993. For sake of arguments even if it is considered that the petitioner had put in 128 days by order of the HP Administrative Tribunal till May, 1993 when the order was vacated by the HP Administrative Tribunal and dismissed the petition of the petitioner, even then the petitioner has failed to prove on record as to how many days he put in the service of the respondents in twelve calendar months preceding his termination and as such it is clear that the petitioner had not worked with the respondent for 240 days in any calendar year and even in twelve calendar months preceding his termination, hence the case of the petitioner does not fall under section 25-F of the Act. It is well settled that where the workman has not produced any evidence to show that he had worked for more than 240 working days preceding his termination and that no evidence has been led in order to show that his juniors are still working with the respondent, the petitioner is not entitled to any protection under the provisions of the Industrial Disputes Act, 1947. Here I am fortified with a view taken by their lordship of Hon'ble Supreme Court in AIR 2006 S.C. 110 case titled as *Surindernagar District Panchyat V/s Dayabhai Amar Singh* in which it was held that:—

“In case workman claims to have worked for more than 10 years as daily wagger. Apart from oral evidence workman has not produced any evidence to prove fact that he has worked for 240 days. No proof of receipt of salary or wages or any record or order in that regard was produced: no co-worker

was examined; muster roll produced by employer has not been contradicted. Workman has failed to discharge his burden that he was in employment for 240 days during preceding 12 months of date of termination of his service. Workman not entitled for protection of Section 25-F before his service was terminated.”

Thus, having regard to the entire evidence on record and on the strength of above cited ruling, it can safely be concluded that the petitioner has miserably failed to prove on record that he has completed 240 working days in twelve calendar months preceding his termination nor his juniors are still continuing with the respondent accordingly, I hold that the services of the petitioner have not been illegally terminated by the respondents without complying with the provisions of Industrial Disputes Act, 1947. Accordingly, issue no.1 is decided in favour of the respondents and against the petitioner.

Issue No. 2

14. Since I have held under issue no.1 above that the services of the petitioner were not illegally terminated by the respondent w.e.f. 24.5.1993 without complying the provisions of Industrial disputes Act, 1947, hence the petitioner is not entitled to any service benefits as prayed by him. Accordingly, issue no.2 is decided in favour of the respondents and against the petitioner.

Issue No. 3.

15. In support of this issue, no evidence was led by the respondents. However I have scrutinized the record of the case and observed that there is no limitation under the Industrial Disputes Act, 1947 as it was held by their lordship of *Hon'ble Supreme Court reported in (1999) 6 SCC 82 case titled as Ajayab singh Vs. Sirhind Co-operative Marketing –cum- processing Service Society Limited and Another*. In which it was held that:—

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”

Accordingly, on the strength of this ruling, it can safely be concluded that there is no limitation under the Industrial Disputes Act, 1947. Accordingly, issue no.3 is decided in favour of the petitioner and against the respondents.

Issue No. 4

16. In support of this issue, no evidence was led by the respondent being the legal issue. However, I find no force in this contention as it was held by the *Full Bench of Hon'ble Supreme Court reported in 1978 (2) SCC 213* in which it was held that the educational institute and research centres are Industries. It was further held by the Hon'ble Supreme Court in case titled *Banglore Water Supply and Sewerage Board Vs. A. Rajappa as reported in 1978 Vol-1 LLJ-349* in which it was held that a University is an Industry particularly with respect to small workers like Mali, Chowkidars, Carpenters etc. and as such on the strength of these judgments, it can safely be concluded that the respondent department is an Industry and governed by the Industrial Disputes Act, 1947. Accordingly, issue no.4 is decided in favour of petitioner and against the respondents.

RELIEF

As a sequel to my above discussion and findings on issue no.1 to 4 above, the claim of the petitioner fails and is hereby dismissed and as such the reference is ordered to be answered in negative. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced in the open court today on this day of 16th July 2009 in the presence of parties counsels.

By order,
J. S. MAHANTAN,
Presiding Judge.

**IN THE COURT OF JAGMOHAN SINGH MAHANTAN, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT, SHIMLA**

Ref no. 96 of 2006.
Instituted on. 25.7.2006
Decided on. 17.7.2009.

Jai Ram S/o Shri Lachhu Ram R/o Village Baharei, P. O. Sarahan, Tehsil & District Chamba, HP.

... Petitioner.

Vs.

The Divisional Forest Officer, Shimla, District Shimla, HP.

... Respondents.

Reference under Section 10 of the Industrial Disputes Act, 1947.

For petitioner : Shri Rohit Sharma, Ld. Csl.

For respondent : Shri Jagdish Kanwar, Ld. DDA.

AWARD.

1. The following reference has been received from appropriate government by this court for adjudication:

“Whether the termination of services of Shri Jai Ram S/o Shri Lachhi Ram workman by the Divisional Forest Officer, Forest Division Shimla-2 w.e.f. 1.5.2000 without complying the provisions of the Industrial Disputes Act, 1947 is proper and justified? If not, what relief of service benefits and amount of compensation, the above aggrieved workman is entitled to?”

2. The petitioner has filed a statement of claim asserting therein that he was appointed as peon by the respondent on 13th June, 1998 on daily wages basis, who worked till 1.5.2000 to the entire satisfaction of the respondent and then his services were illegally terminated by the respondent without any notice and without compliance of the statutory provisions of Industrial Disputes Act, 1947 and that the services of the petitioner were illegally terminated by adopting the method of unfair labour practice, hence the concept of the termination cannot be used as hire and fire formula and that the petitioner had worked continuously and had completed 240 days in the calendar year preceding twelve calendar months and thus the petitioner is entitled for the protection of labour law legislation and that the petitioner was always prepared and willing to work with the respondent, who was illegally terminated from service and even junior employees were retained in service and as such the petitioner left with no alternative but to submit his demand notice under section 2A of the Industrial disputes Act, 1947 and that the oral termination of the petitioner based on surmises and conjecture being violative of section 25G & 25H of the Industrial Disputes Act, 1947 and that the petitioner is unemployed from the date of his illegal removal from service and as such prayed for reinstatement since 1.5.2000 with full back wages, seniority and other consequential benefits alongwith costs, hence this claim.

3. The respondent resisted and contested the claim of the petitioner, which filed reply interalia raising preliminary objections of maintainability as the petitioner left the job of his own, who was not retrenched and barred by estoppel, the petitioner is gainfully employed and the forest department is not an industry. On merits, it is contended that the petitioner was never appointed as a peon, who was engaged as daily wages labourer w.e.f. 21.4.1998 to 30.4.2000, who left the work of his own and did not turn up for work after 30.4.2000 and as such there was no need of giving notice and no assurance was given to the petitioner and that the petitioner worked as daily wages laborer purely on temporary basis in construction range at Khalini and the daily wages labourer are engaged keeping in view the availability of work and budget and that the junior labourers did not leave the job like petitioner and that no regular appointment orders were issued for the engagement of daily wages labourers, who were engaged on the availability of work and as such prayed for the dismissal of the claim.

4. In the rejoinder, the petitioner controverted the assertions made in the reply and reiterated and reaffirmed the averments of the petition.

2. The following issues were framed by this court on 22.5.2007 on the pleadings of the parties.

1. Whether the services of the petitioner have been illegally terminated without complying with the provisions of Industrial Disputes Act, 1947? If so, its effect? ...OPP.

2. If issue no.1 is proved in affirmative, to what relief, the petitioner is entitled to? ...OPP.
3. Whether the petition in the present form is not maintainable and is also barred by limitation? ...OPP.
4. Relief.

6. I have heard the Ld. Counsel for the petitioner and Ld. DDA for respondent and have gone through the record of the case.

7. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings on the aforesaid issues are as under:

Issue No. 1	Yes.
Issue No. 2	Entitled for reinstatement in service as beldar with seniority and continuity but without back wages.
Issue No. 4	No.
Relief.	Reference answered in affirmative per operative part of award.

REASONS FOR FINDINGS.

Issue No. 1.

8. Coming to this issues, the petitioner has examined himself as PW-1, who has stated that he was working in HP Secretariat (Forest Branch) as peon, who joined his duties in June, 1998, who worked till May, 2000 and he was told by the respondent to come after 3-4 days but he was not reengaged, who had completed more than 240 days in each calendar year. No notice nor compensation has been given to him and juniors to him are still working and he is working in his village and as such prayed for reinstatement.

9. To rebut the case the petitioner, the respondent has examined two RWs in all. RW-1 Shri Pawan Kumar, Forest Guard has stated that he remained posted as Forest Guard in Construction Range Khalini from December, 1999 to June, 2001 and he is well conversant with the facts of the case. The petitioner was engaged as daily wages beldar with the respondent on 21.4.1998, who continued as such till 30.4.2000 and the petitioner abandoned his job himself, who was never terminated by the respondent and no juniors to the petitioner were engaged in service by the respondent.

10. RW-2, Shri Liaq Ram has stated that he is posted as an ACF Publicity Forest Division Shimla since October, 2004 and he is well conversant with the facts of the case. He tendered his affidavit Ex. RX, the muster rolls of the petitioner Ex. RA to Ex. RC and mandays chart of the petitioner Ex. RD.

11. Shri Rohit Sharma, Ld. Counsel for petitioner has vehemently argued at the very outset that the petitioner was terminated from service without notice and without payment of compensation as the petitioner has put in 357 days in twelve calendar months preceding his oral termination and as such the termination of the petitioner from service is bad under section 25F of the Industrial Disputes Act, 1947 and as such the petitioner is entitled to be reinstated in service with seniority, continuity and back wages alongwith all consequential benefits.

12. Shri Jagdish Kanwar, Ld. DDA for respondent has controverted the arguments of Shri Sharma and has submitted that the petitioner was never terminated from service by the respondent at any point of time, who left the job of his own and moreover the petitioner was engaged against specific works as per need of the work subject to the availability of work and funds and as such the petitioner is not entitled to any service benefits as prayed by him.

13. I have considered the respective contentions of both the parties and have scrutinized the record of the case.

14. After the close scrutiny of the record of the case, it remains a fact that the petitioner has completed more than 240 working days i.e 357 days in twelve calendar months preceding his termination as is evident from the mandays chart Ex. RD placed on record and even the junior to the petitioner Shri Surinder is still continuing with the respondent as admitted by RW-2 Shri Liaq Ram, ACF Publicity Forest Division, Shimla. It is also borne out from the record that no notice nor compensation was paid to the petitioner by the respondent at the time of his retrenchment and as such the case of the petitioner securely falls under section 25F, 25G & 25H of the Industrial Disputes Act, 1947.

Section 25-F of the 'Act' says that:

25-F. CONDITIONS PRECEDENT TO RETRENCHMENT OF WORKMEN.- No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

- (d) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;
- (e) the workman has been paid, at the time of retrenchment compensation which shall be equivalent of fifteen days' average pay (for every completed year of continuous service) or any part thereof in excess of six months; and
- (f) notice in the prescribed manner is served on the appropriate government (or such authority as may be specified by the appropriate Government by notification in the Official Gazette.)

15. In the instant case, the respondent has not taken any steps to serve a notice nor paid compensation in lieu thereof under section 25F of the I.D Act, 1947. Moreover, the petitioner has proved on record that his junior Surinder is still working with the respondent and as such the provisions of section 25G & H are attracted in this case.

16. Now, turning to the other aspect of the case, the respondent has tried to establish on record that the petitioner has left the job of his own but there is nothing on record which could show that the petitioner himself is responsible for loosing his job. Moreover, it is well settled in *State of HP & Others Vs. Bhatag Ram & Another as reported in latest HLJ 2007 (HP) 903* in which it was held that:-

“Plea of abandonment of job- merely raising the plea of abandonment is nothing but has to be established on the basis of facts. No facts led to substantiate the plea.”

In the instant case, the respondent had failed to serve notice upon the petitioner on completion of 357 days in twelve calendar months preceding his termination and even it is also proved on record that the respondent has violated the provisions of section 25G & H by retaining the junior to the petitioner Shri Surinder Singh in the job which action of the respondent is illegal, improper and unjustified. Thus, having regard to the entire evidence on record, it can safely be concluded that the petitioner has completed more than 240 working days i.e 357 days in twelve calendar months preceding his termination, who was terminated from service without any notice and without any compensation and obviously therefore, the case of the petitioner squarely falls under section 25F read with section 25G and H of the Industrial disputes Act, 1947 and the termination of the petitioner w.e.f. 1.5.2000 without complying with the provisions of Industrial disputes Act, 1947 is held illegal and unjustified. Accordingly, issue no.1 is decided in favour of petitioner and against the respondent.

Issue No. 2.

17. Since I have held under issue no. 1 above that the services of petitioner have been illegally terminated by the respondent without complying with the provisions of Industrial Disputes Act, 1947, hence the petitioner is held entitled to his reinstatement in service forthwith with seniority and continuity. However, the petitioner is not entitled to back wages as he has not placed any material on record to substantiate that he was not gainfully employed after his termination. Accordingly, issue no.2 is decided in favour of the petitioner and against the respondent.

Issue No. 3

18. In support of this issue, no evidence was led by the respondents. However I have scrutinized the record of the case and find nothing wrong with this petition is perfectly maintainable in the present form and there is no limitation under the Industrial Disputes Act, 1947 as it was held by their lordship of *Hon'ble Supreme Court reported in (1999) 6 SCC 82 case titled as Ajayab Singh Vs. Sirhind Co-operative Marketing -cum- processing Service Society Limited and Another* in which it was held that:-

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”

Accordingly, on the strength of this ruling, it can safely be concluded that there is no limitation under the Industrial Disputes Act, 1947 which is perfectly maintainable in the present form and not barred by limitation. Accordingly, issue no.3 is decided in favour of the petitioner and against the respondent.

RELIEF

As a sequel to my above discussion and findings on Issue no.1 to 3, the claim of the petitioner succeeds and is hereby allowed and the petitioner is ordered to be reinstated forthwith in service with seniority and continuity from the date of his illegal termination but without back wages as the petitioner has not placed any material on record to substantiate that he was not gainfully employed after his termination and as such the reference is ordered to be answered in affirmative. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced in the open court today on this day of 17th July, 2009 in the presence of parties.

By order,
J. S. MAHANTAN,
Presiding Judge

**IN THE COURT OF JAGMOHAN SINGH MAHANTAN, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT, SHIMLA**

Ref no. 127 of 2004.
Instituted on. 13.8.2004
Decided on. 20.7.2009.

Mansa Ram S/o Shri Tulsi Ram R/o Village Dargwaj, P.O Chandi, Tehsil Kasauli, District Solan, HP.

...Petitioner.

Vs.

The Sub Divisional Officer, HPSEB Electrical Sub Division, Goyala Tehsil Kasuali, District Solan, HP. ...Respondent.

Reference under Section 10 of the Industrial Disputes Act, 1947.

For petitioner: Shri Rajesh Raghuvanshi, Ld.Csl.

For respondent: Ms. Sharmila Patial, Ld, Csl.

AWARD.

1. The following reference has been received from appropriate government by this court for adjudication:

“Whether the termination of services of Shri Mansa Ram S/o Shri Tulsi Ram ex daily wages beldar by the Sub Divisional Officer, HPSEB (E) Sub Division Goyala, Tehsil Kasauli, District Solan HP w.e.f. 1.4.1999 without complying the provisions of Industrial Disputes Act, 1947 and whereas junior to him are retained as alleged by the workman is proper and justified? If not, what relief of service benefits Shri Mansa Ram workman is entitled to?”

2. The petitioner has filed a statement of claim asserting therein that he was initially engaged as daily wages beldar on muster roll basis in the year 1982 in Sub Division Goyala, Division Arki, District Solan HP alongwith other daily wages beldar and the petitioner served with the respondent upto 1985 and then the Sub Division Goyala came under Division Parwanoo and the petitioner was again engaged as daily wages beldar by the respondent on 1.4.1987, who served with the respondent till 20.4.1999 continuously with more than 240 days in each calendar year and that the services of the petitioner were terminated on 20.4.1999 without any notice which is mandatory under section 25F of the Industrial Disputes Act, 1947 and that the other daily wages beldars S/Shri Deep Ram, Het Ram, Kali Ram, Baldev, Husan, Roop Ram and Nanak Chand, who were juniors to the petitioner are retained by the respondent whose services have been regularized and that the action of the respondent to dispense with the services of the petitioner is violative of section 25F of the Industrial Disputes Act and also violative of last come first go, hence prayed for reinstatement in service alongwith all consequential benefits of back wages, seniority, continuity, hence this claim.

3. The respondent resisted and contested the claim of the petitioner, which filed reply interalia raising preliminary objections of non joinder of necessary parties, no enforceable cause of action and hit by vice of delay and latches. On merits, it is contended that the petitioner was engaged as daily wages beldar on 1.4.1987, who worked upto

25.5.1990 with frequent breaks and then the petitioner was reengaged by the respondent w.e.f. 26.2.1992 after about two years and worked as such upto 25.5.1994 and then the petitioner left the job of his own and did not turn up for his duties, who again approached the respondent and was reengaged on 11.9.1995 and worked upto 10.10.1995 and then the petitioner again left the job of his own and after three years, the petitioner approached the respondent, who was reengaged on 21.11.1998 and worked upto 31.3.1999 and then again left the job of his own whereas the work was available with the respondent and other persons continued to perform their duties and as such the respondent never violated the standing orders instructions. It is also contended that the petitioner had not completed 240 days in any calendar year with the respondent except 1993 and the petitioner himself absented from duties at his own and that the services of the petitioner have never been terminated by the respondent and the persons mentioned by the petitioner are senior to him except Shri Roop Ram and that the petitioner left the job of his own, hence no notice as per section 25F of the Industrial Disputes Act was required to be served upon him and since the petitioner was not retrenched therefore, the principle of last come first go as well as to pay the retrenchment compensation is also not obligatory on the part of the respondent and as such prayed for the dismissal of the claim.

4. In the rejoinder, the petitioner controverted the assertions made in the reply and reiterated and reaffirmed the averments of the petition.

5. The following issues were framed by this court on 6.12.2005 on the pleadings of the parties:

1. Whether the service of the petitioner has been illegally terminated by the respondent without complying with the provisions of I.D Act, 1947? If so, its effect? ...OPP.
2. If issue no.1 is proved in affirmative, to what relief of service benefits, the petitioner is entitled to? ...OPP.
3. Whether the petition is not maintainable in the present form? ...OPR.
4. Whether the petition is bad for non joinder of necessary parties? ...OPR.
5. Relief.

6. I have heard the Ld. Counsels for the parties and have gone through the record of the case.

7. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings on the aforesaid issues are as under:

Issue No. 1	Yes.
Issue no.2	Entitled for reinstatement in service with seniority and continuity but without back wages.
Issue no.3	No.
Issue no.4	No.
Relief.	Reference answered in affirmative per operative part of award.

REASONS FOR FINDINGS

Issue No. 1.

8. Coming to this issue, the petitioner has examined himself as PW-1, who has stated that he was engaged as beldar on daily wages during 1982 and was given one month break in 1985 as no muster roll was issued and he was again engaged in 1991 and thereafter he was working regularly whose services were terminated in 1999. No notice nor compensation was given to him and his juniors S/Shri Het Ram, Deep Ram, Baldev, Husan etc. are still working and their services have been regularized and he met the J.E and SDO, who assured him that he would be engaged as and when the work would be available and when he was not engaged, he approached the Administrative Tribunal which petition was withdrawn by him and the department had given one day break, so that he could not complete 240 days, who was illegally terminated without any notice and compensation whereas his juniors are still working.

9. To rebut the case of the petitioner, the respondent has examined RW-1 Er. Amrik Singh, XEN Electrical Division, Parwanoo, who has stated that he is posted in this Division since Nov. 2005 and is well conversant with the facts of the case. The petitioner was engaged as beldar on 1.4.1987, who was working with frequent breaks and the petitioner left the job on 31.3.1999. The service of the petitioner has not been terminated by the respondent. The petitioner completed 240 days in 1993 with frequent breaks and proved the mandays chart Ex. RA and the petitioner generally remained absent and not worked for digging electrical poles. The petitioner remained absent when the work was providing for LT extension to village Barla, who was coming for light duties i.e providing power connection etc.

10. The case of the petitioner is that he being daily wages beldar having worked for more than 240 days in each calendar year preceding his termination, who was orally terminated from service by the respondent as no notice nor any compensation was paid to him and even juniors to him are still working with the respondent board, hence he is liable to be reinstated in service with all consequential benefits.

11. On the contrary, the respondent contends that the petitioner had not completed 240 working days in twelve calendar months preceding his termination, who left the job of his own and no junior to the petitioner was retained by the respondent and as such the claim of the petitioner is liable to be dismissed.

12. I have considered the respective contentions of both the parties and have scrutinized the record of the case.

13. After the close scrutiny of the record of the case, it is clear that the petitioner was engaged as beldar on daily wages w.e.f. 1.4.1987, who continued as such till 31.3.1999 with fictional breaks. No doubt, the respondent has tried to establish on record that the petitioner has abandoned the job of his own but there is nothing on record which could go to show that the petitioner had abandoned the job of his own as no explanation, domestic enquiry and letter was written to the petitioner to resume his duties and as such it does not lie in the mouth of the petitioner to say that the petitioner has abandoned the job of his own. However, it is well settled in *State of HP & Others Vs. Bhatag Ram & Another as reported in latest HLJ 2007 (HP) 903* in which it was held that:—

“Plea of abandonment of job- merely raising the plea of abandonment is nothing but has to be established on the basis of facts. No facts led to substantiate the plea.”

Now, adverting to the other aspect of the case, the petitioner has proved on record that he was terminated from service without notice and without payment of compensation and his junior Shri Roop Ram is still working with the respondent as admitted by RW-1 Er. Amrik Singh that one Roop Ram is junior to the petitioner, who joined the department on 18.4.1987 and is still working with the respondent whereas the petitioner was engaged on 1.4.1987 and as such Shri Roop Ram is proved to be junior to the petitioner, who is still working with the respondent and obviously therefore, it is proved on record beyond any doubt that Shri Roop Ram, junior to the petitioner is still working with the respondent which amounts to unfair labour practice and against the principle of first come last go and the case of the petitioner squarely falls under section 25G & H of the Industrial disputes Act, 1947. Here I am fortified with a view taken by their lordships of *Hon’ble Supreme Court incase titled as State of Haryana Vs. Dilbag Singh reported in 2007 LLR 72 SC* in which it was held that :

“Where Labour Court found that person junior to respondent was still working and thus there was breach of section 25-G & 25-H of the Act. Court directed reinstatement with 50% back wages.”

Similarly, our own Hon’ble High Court of HP has held incase titled as *State of HP & Others Vs Bhatag Ram & Anr. as reported in latest HLJ 2007 (HP) 903*. in which it was held that :-

“Continuing of 240 days not necessary in 12 calendar months. It is not necessary to workman to complete 240 days during 12 months for taking the benefits of section 25-G & 25-H of the Act.”

Thus, having regard to the above cited rulings and inview of entire evidence on record, I have no hesitation in coming to the conclusion that the services of the petitioner were illegally terminated by the respondent without complying the provisions of Industrial disputes Act, 1947 by retaining the junior to the petitioner in the job, who is still continuing with the respondent. Accordingly, issue no.1 is decided in favour of petitioner and against the respondent.

Issue No. 2.

14. Since I have held under issue no. 1 above, the services of petitioner have been illegally terminated by the respondent without complying with the provisions of Industrial disputes Act, 1947, hence the petitioner is held entitled for reinstatement in service alongwith seniority and continuity from the date of his illegal termination. However, the petitioner is not entitled to back wages as he has not placed any material on record to substantiate that he was not gainfully employed after his termination. Accordingly, issue no.2 is decided in favour of the petitioner and against the respondent.

15. In support of this issue, no evidence was led by the respondents nor it was pressed during the course of arguments. However, I find nothing wrong with this petition which is perfectly maintainable in the present form. Accordingly, issue no.3 is decided in favour of the petitioner and against the respondent.

16. In support of this issue, no evidence was led by the respondent nor it was pointed out during the course of arguments as to who are the necessary parties left to be impleaded in this petition. Accordingly, issue no.4 is decided in favour of the petitioner and against the respondent holding that the petition is not bad for non joinder of necessary parties.

RELIEF

As a sequel to my above discussion and findings on issues no.1 to 4, the claim of the petitioner succeeds and is hereby allowed and the petitioner is ordered to be reinstated in service forthwith with seniority and continuity from the date of his illegal termination. However, the petitioner is not entitled to back wages as he has not placed any material on record to substantiate that he was not gainfully employed after his termination and as such the reference is ordered to be answered in affirmative. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced in the open court today on this day of 20th July, 2009 in the presence of parties.

By order,
J. S. MAHANTAN,
Presiding Judge

**IN THE COURT OF JAGMOHAN SINGH MAHANTAN, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT, SHIMLA.**

Ref no. 48 of 2007.
Instituted on.20.6.2007
Decided on. 20.7.2009.

Babu Ram S/o Shri Meena Ram R/o Village Sharera, P.O Chhapang Tehsil Pachhad, District Sirmour, HP.
...Petitioner.

Vs

The Executive Engineer, HPPWD Division Rajgarh, District Sirmour, HP. ...Respondent.

Reference under Section 10 of the Industrial Disputes Act, 1947.

For petitioner: Shri R.K Khidta, Ld. Csl.
For respondent: Shri Jagdish Kanwar, Ld. DDA.

AWARD.

1. The following reference has been received from appropriate government by this court for adjudication:

“Whether the termination of services of Shri Babu Ram S/o Shri Meena Ram workman by the Executive Engineer, HPPWD Division Rajgarh, District Sirmour, HP w.e.f. Sep. 1988 without complying the provisions of the Industrial Disputes Act, 1947 is proper and justified? If not, what relief of service benefits and amount of compensation, the above aggrieved workman is entitled to?”

2. The petitioner has filed a statement of claim asserting therein that he was engaged as beldar by the respondent department in the year 1986 and worked as such till 1.9.1988 and the services of the petitioner were terminated by the respondent w.e.f. 1.9.1988 without following the mandatory provision of Industrial Disputes Act and that the work and conduct of the petitioner remained satisfactory, who had completed 240 days in a calendar year and

the services of the petitioner have been orally terminated without assigning any reason and that the petitioner visited the office of the respondent number of times for reengagement but to no avail and that the petitioner has every right to remain in the job till the date of superannuation. No notice nor compensation has been paid to the petitioner by the respondent at the time of his removal and that the respondent has also engaged other new persons and the petitioner has not been called back and even juniors to the petitioner are still working with the respondent and that the termination of the petitioner tantamounts to unfair labour practice of which the petitioner is victim and the action of the respondent is against the provisions of the Industrial Disputes Act, 1947 and that the petitioner is a workman as defined under the Industrial Disputes Act and that the oral termination order of the petitioner is wholly illegal, unjust, arbitrary and against the principle of natural justice and as such prayed for reinstatement w.e.f. 1.9.1988 with full back wages and other consequential service benefits, hence this claim duly supported by an affidavit.

3. The respondent resisted and contested the claim of the petitioner, which filed reply interalia raising preliminary objections of maintainability as the petitioner had abandoned the job of his own and that the petitioner has not completed 240 days in any calendar year, non joinder of necessary parties, the claim having become stale by virtue of lapse of time and the petitioner was engaged on daily wages beldar in December, 1986, who worked only for 14 days and in the year 1987, who worked for 234 days w.e.f. April 1987 to December, 1987, who worked only for 196 days w.e.f. Jan. 1988 to Sep. 1988 and then the petitioner abandoned the job of his own and that no fundamental or legal right of the petitioner has been infringed. On merits, it is contended that the petitioner was engaged as beldar by the respondent department in the year 1986, who worked upto 7.9.1988. It is denied that the services of the petitioner were terminated by the respondent without following the provisions of Industrial disputes Act, 1947. It is also contended that the petitioner abandoned the job of his own. It is also denied that the petitioner had completed 240 days in a calendar year, hence the question of giving notice does not arise at all and that the petitioner left the job of his own accord therefore, retention of the services of the junior persons in the interest of government workings never violated the principles of last come first go. It is also denied that the termination of the petitioner tantamounts to unfair labour practice of which the petitioner is victim and the action of the respondent department is against the principle of natural justice and as such prayed for the dismissal of the claim.

4. In the rejoinder, the petitioner controverted the assertions made in the reply and reiterated and reaffirmed the averments of the petition.

5. The following issues were framed by this court on 11.1.2008 on the pleadings of the parties.

1. Whether the service of the petitioner has been illegally terminated by the respondent w.e.f. Sep. 1988 without complying with the provisions of I.D Act, 1947? If so, its effect? ...OPP.
2. If issue no.1 is proved in affirmative, to what relief, the petitioner is entitled to? ...OPP.
3. Whether the petitioner has abandoned the job himself? If so, its effect? ...OPR.
4. Whether the petition is barred by limitation? ...OPR.
5. Relief.

6. I have heard the Ld. Counsel for the petitioner and Ld. DDA for respondent and have gone through the record of the case.

7. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings on the aforesaid issues are as under:

Issue no.1	Yes.
Issue no.2	Entitled for reinstatement in service with seniority and continuity but without back wages.
Issue no.3	No.
Issue no.4	No.
Relief.	Reference answered in affirmative per operative part of award.

REASONS FOR FINDINGS.

Issue No. 1.

8. Coming to this issue, the petitioner has examined two PWs in all. The petitioner Babu Ram appeared in the dock as PW-1, who has stated that he was engaged as beldar on daily wages with respondent from December, 1986

to 1.9.1988 and then he was removed from service by the respondent, who had completed more than 240 working days in a calendar year preceding his termination. No notice nor compensation was paid to him at the time of his removal and his juniors S/Shri Satpal, Liaq Ram, Lekh Ram, Jeet Singh and Shama Nand are still working with the respondent and after his removal, he used to visit the respondent for his reengagement but to no avail and he is still unemployed and as such prayed for reinstatement with all consequential benefits.

9. PW-2 Er. N.K Gupta has stated that he is posted as an Assistant Engineer HPPWD Rajgarh since March, 2008 and he is well conversant with the facts of the case. As per record S/Shri Shama Dutt, Satya Pal, Lekh Ram and Liaq Ram were engaged on 22.9.1986, 20.6.1987, 8.1.1987 and 6.3.1987 respectively and they did not issue any letter to the petitioner after he was removed from the job and the petitioner has not served any demand notice to the respondent.

10. To rebut the case the petitioner, the respondent has examined RW-1 Er. Ravi Dutt Sharma, who has stated that he is posted as an Additional Assistant Engineer, HPPWD, Rajgarh since June, 2008 and is well conversant with the facts of the case. The petitioner was engaged as daily wages beldar on 17.12.1986, who continued as such till 7.9.1988, who abandoned the job of his own, who was never terminated by the respondent and the petitioner never approached the respondent for reengagement and proved the mandays chart of the petitioner Ex. RA. The petitioner has raised this dispute after eleven years and no junior to the petitioner was engaged by the respondent except on compassionate grounds and the petitioner has never completed 240 working days in any calendar year preceding his abandonment. In Sept. 1988, the muster roll no. 708 Ex. RB & RC clearly shows that there were eighteen workmen including petitioner but the petitioner did not join his duties for the reason best known to him and similarly in the muster rolls for the months of 10/1988 and 11/1988 Ex. RD and RE, the vacancy of the petitioner was kept intact but he did not turn up and the petitioner visited the office in December, 1988 to collect his wages of Sept. 1988 for seven days amounting to Rs. 105/- which was paid to him vide Ex. RF alongwith his application and as such the claim of the petitioner is false.

11. Shri R.K Khidta, Ld. Counsel for petitioner has vehemently argued at the very outset that it stands proved on record that the petitioner has completed 273 working days in twelve calendar months preceding his termination and moreover, the juniors to the petitioner are still working with the respondent and as such the case of the petitioner squarely falls under section 25F read with sections 25G and H of the Industrial Disputes Act, 1947 as no notice nor compensation was paid to the petitioner and as such the petitioner is entitled to be reinstated in service with seniority, continuity and back wages alongwith all consequential benefits.

12. Shri Jagdish Kanwar, Ld. DDA for respondent has controverted the arguments of Shri Khidta and has submitted that alleged juniors cannot be said to be juniors as they also worked with the petitioner, who are his colleagues. Moreover, the petitioner has abandoned the job of his own, who was never terminated from service by the respondent and as such the petitioner is not entitled to any service benefits as claimed by him.

13. I have considered the respective contentions of both the parties and have scrutinized the record of the case.

14. After the close scrutiny of the record of the case, it remains a fact that the petitioner had worked with the respondent w.e.f. December, 1986 to 7.9.1988 as is evident from the mandays chart Ex. RA placed on record and if we calculate the twelve calendar months preceding his termination that comes to 273 days in 1987 and 1988 i.e. from October, 1987 to September, 1988. It is also proved on record that no notice nor compensation under section 25F was paid to the petitioner at the time of his termination. No doubt that the respondent had tried to establish on record that the petitioner has left the job of his own but no explanation nor domestic enquiry was conducted by the respondent for the reasons best known to it. Moreover, it is also proved on record by RW-1 Er. Ravi Dutt Sharma AAE that Liaq Ram, Kashma Dutt and Lekh Ram were engaged on 6.3.1987, 22.9.1986 and 1.8.1987 respectively whereas Babu Ram, petitioner was engaged in December, 1986 and therefore Liaq Ram and Lekh Ram are proved to be junior to the petitioner, who are still continuing with the respondent department while Kashma Dutt, who was engaged on 22.9.1986 is the senior but not the junior to the petitioner and since the juniors are still working with the respondent department and therefore, the provisions of section 25G & H of the Industrial disputes Act, 1947 are attracted in this case. Here I am fortified with a view taken by their lordships of *Hon'ble Supreme Court incase titled as State of Haryana Vs. Dilbag Singh reported in 2007 LLR 72 SC* in which it was held that :

“Where Labour Court found that person junior to respondent was still working and thus there was breach of section 25-G & 25-H of the Act. Court directed reinstatement with 50% back wages.”

Similarly, our own Hon'ble High Court of HP has held incase titled as *State of HP & Others Vs Bhatag Ram & Anr. as reported in latest HLJ 2007 (HP) 903*, in which it was held that :-

“Continuing of 240 days not necessary in 12 calendar months. It is not necessary to workman to complete 240 days during 12 months for taking the benefits of section 25-G & 25-H of the Act.”

Thus, having regard to the above cited rulings and the entire evidence on record, I have no hesitation in coming to the conclusion that the services of the petitioner were illegally terminated by the respondent without complying the provisions of Industrial disputes Act, 1947 on the completion of 273 working days preceding his termination as no notice nor compensation in lieu thereof was paid to the petitioner by the respondent and also by retaining the juniors to the petitioner in the job, who are still continuing with the respondent. Accordingly, issue no.1 is decided in favour of petitioner and against the respondent.

Issue No. 2.

15. Since I have held under issue no. 1 above that the services of petitioner have been illegally terminated by the respondent w.e.f Sept. 1988 without complying with the provisions of Industrial Disputes Act, 1947, hence the petitioner is held entitled to his reinstatement in service alongwith seniority and continuity. However, the petitioner is not entitled to back wages as he has not placed any material on record to substantiate that he was not gainfully employed after his termination. Accordingly, issue no.2 is decided in favour of the petitioner and against the respondent.

Issue No .3.

16. In support of this issue, no evidence was led by the respondent being the legal issue nor it was pressed during the course of arguments. However, it is well settled in *State of HP & Others Vs. Bhatag Ram & Another as reported in latest HLJ 2007 (HP) 903* in which it was held that:-

“Plea of abandonment of job- merely raising the plea of abandonment is nothing but has to be established on the basis of facts. No facts led to substantiate the plea.”

17. Thus, having regard to the above cited ruling and in view of no evidence on record on this issue, I have no hesitation in coming to the conclusion that the petitioner has not abandoned the job of his own. Accordingly, issue no.3 is decided in favour of petitioner and against the respondent.

Issue No. 4

18. In support of this issue, no evidence was led by the respondents being the legal issue. However, I have scrutinized the record of the case and observed that there is no limitation under the Industrial Disputes Act, 1947 as it was held by their lordships of *Hon’ble Supreme Court reported in (1999) 6 SCC 82 case titled as Ajayab singh Vs. Sirhind Co-operative Marketing –cum- processing Service Society Limited and Another*. In which it was held that:-

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”

19. Accordingly, on the strength of this ruling, it can safely be concluded that there is no limitation under the Industrial Disputes Act, 1947. Accordingly, issue no.4 is decided in favour of the petitioner and against the respondent.

RELIEF

As a sequel to my above discussion and findings on Issue no.1 to 4, the claim of the petitioner succeeds and is hereby allowed and the petitioner is ordered to be reinstated forthwith in service with seniority and continuity from the date of his illegal termination but without back wages as the petitioner has not placed any material on record to substantiate that he was not gainfully employed after his termination and as such the reference is ordered to be answered in affirmative. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced in the open court today on this day of 20th July, 2009 in the presence of parties.

By order,
J. S. MAHANTAN,
Presiding Judge

**IN THE COURT OF JAGMOHAN SINGH MAHANTAN, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT, SHIMLA**

Ref no. 359 of 2002.
Instituted on. 11.11.2002
Decided on. 21.7.2009.

Mahant Ram S/o Shri Bhullu Ram R/o Village Thaler, P.O Marathu, Tehsil Sadar, District Mandi, HP.

...Petitioner.

Vs.

The Block Development Officer, Nahan, District Sirmour, HP.

...Respondent.

Reference under Section 10 of the Industrial Disputes Act, 1947.

For petitioner : Shri J.C Bhardwaj, Ld. AR

For respondent : Shri Jagdish Kanwar, Ld. DDA.

AWARD.

1. The following reference has been received from appropriate government by this court for adjudication:

“Whether the termination of services of Shri Mahant Ram S/o Shri Bhullu Ram ex daily wages beldar by the Block Development Officer, Nahan District Sirmour, HP w.e.f. 1.6.2001 without complying the provisions of the Industrial disputes Act, 1947 is proper and justified? If not, what relief of service benefits and amount of compensation, the above workman is entitled to?”

2. The petitioner has filed a statement of claim asserting therein that the respondent department is an industry under section 2(k) read with section 2A of the Industrial disputes Act, 1947 and that the petitioner was engaged as beldar on daily wages @ Rs. 51/- per day by the respondent in the month of July, 2000 and worked as such continuously from July, 2000 to 31.5.2001 and then on 1.6.2001, the service of the petitioner has been illegally terminated by the respondent without assigning any reason and without issuing of notice under section 25F of the Industrial Disputes Act and that the petitioner has visited the office of the respondent after termination but the respondent has not issued muster roll and that while dispensing with the services of the petitioner, no notice was given indicating the reason for termination nor any wages were paid in lieu thereof to the petitioner and that the petitioner has served the respondent for more than 240 days within preceding twelve calendar months and that there is plenty of work available with the respondent and that the petitioner belongs to a poor family and as such prayed for reinstatement from the date of termination, hence this claim.

3. The respondent resisted and contested the claim of the petitioner, which filed reply interalia raising preliminary objections of maintainability, non joinder of necessary parties, this court having no jurisdiction and having no cause of action. On merits, it is contended that the respondent does not fall within the definition of Industry as defined in Industrial Disputes Act, 1947, hence this court has no jurisdiction to try this case and that the petitioner was engaged as daily wages beldar @ Rs. 51/- per day by the respondent from July, 2000 to 31.5.2001. It is denied that the services of the petitioner were terminated by the respondent illegally and orally. It is also contended that regular incumbent had joined in November, 2000 and though the petitioner was paid from contingency funds against the vacant post but he continued to be paid as such till 31.5.2001 by considering his financial difficulties and that the petitioner had given notice on 4.3.2002 which was replied and that the petitioner himself left the service, hence there is no question of giving one month notice to the petitioner. It is also contended that there is no continuous work available with the respondent and as such prayed for the dismissal of the claim.

4. In the rejoinder, the petitioner controverted the assertions made in the reply and reiterated and reaffirmed the averments of the petition.

5. The following issues were framed by this court on 27.12.2004 on the pleadings of the parties.

1. Whether the termination of services of petitioner w.e.f. 1.6.2001 without complying the I.D Act, 1947 is proper and justified? ...OPR.
2. If issue no.1 is not proved, to what relief of service benefits and amount of compensation, the petitioner is entitled to?OPP.

3. Whether the petition is not maintainable as alleged in preliminary objection no.1?OPR.
4. Whether the petition is bad for non joiner of necessary parties as alleged in preliminary objection No. 2 ...OPR.
5. Whether there is no cause of action as alleged in preliminary objection No.1. ...OPR.
6. Relief.

6. I have heard the Ld. AR for the petitioner and Ld. DDA for respondent and have gone through the record of the case.

7. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings on the aforesaid issues are as under:

Issue no.1	No.
Issue no.2	Entitled for reinstatement in service with seniority and continuity but without back wages.
Issue no.3	No.
Issue no.4	No.
Issue no.5	No.
Relief.	Reference answered in affirmative per operative part of award.

REASONS FOR FINDINGS.

Issue No. 1.

8. Coming to this issue, the petitioner has examined himself as PW-1, who has stated that he was engaged as beldar on the basis of daily wages @ Rs. 51/- per day w.e.f. July, 2000 and after his appointment, he performed his duties continuously without any interruption in service till 31.5.2001, who had completed more than 240 days preceding his termination, who was terminated w.e.f. 1.6.2001, who requested the respondent several times to provide employment to him but to no avail. Neither any notice was served upon him at the time of his termination nor he was paid salary in lieu of that. No retrenchment compensation was tendered by the respondent and he is unemployed since his termination and as such prayed for reinstatement in service along with all consequential benefits including back wages, continuity and seniority in service.

9. To rebut the case of the petitioner, the respondent has examined two RWs in all. RW-1 Shri Suresh Kumar, BDO Nahan has stated that the petitioner was engaged on daily wages/temporary basis as beldar and they were making the payment of the wages of the petitioner from various schemes from contingency. The petitioner was orally engaged without any interview. The post was lying vacant against which the petitioner was engaged, who was engaged in July, 2000 and the regular official joined his duties in May, 2000 and the petitioner has been removed in May, 2001 as there was no funds available and the regular official has joined against vacant post, hence his services were removed. The petitioner has given an affidavit Ex. RA at the time of his appointment and the petitioner had worked for 183 days in 2000 and 133 days in 2001 and the services of the petitioner has not been terminated.

10. RW-2, Shri Paramjeet Singh, Junior Assistant BDO Office Nahan has stated that the petitioner was engaged as beldar against the regular post of peon and the regular peon has been appointed in Oct. 2000 and proved the copy of appointment letter of Ms. Maya Devi Ex. RX. The petitioner has not completed 240 days in a calendar year, who had worked for 183 days in 2000 and 180 days in 2001 and the petitioner also furnished an affidavit Ex. RA that he would not claim any right against the post he was working.

11. The case of the petitioner is that he being daily wages worker having worked for more than 240 days in each calendar year preceding his termination, who was orally terminated from service by the respondent as no notice nor any compensation was paid to him, hence he is liable to be reinstated in service with all consequential benefits.

12. On the contrary, the respondent contends that the petitioner had not completed 240 working days in twelve calendar months preceding his termination, who was engaged as casual labourer on temporary basis from July,

2000 to 31.5.2001, who was removed in May, 2001 for want of funds and the regular peon has joined against vacant post and since the petitioner has sworn an affidavit Ex. RA that he shall not claim any right over the post and as such it does not lie in the mouth of the petitioner to claim his reinstatement alongwith other consequential benefits.

13. I have considered the respective contentions of both the parties and have scrutinized the record of the case.

14. After the close scrutiny of the record of the case, it is clear that the petitioner was engaged as labourer on daily wages by the respondent in the month of July, 2000 and continued as such till 31.5.2001 which fact has not been disputed by the respondent. It is also proved on record that the petitioner has completed more than 240 working days in twelve calendar months preceding his termination which fact has also admitted by RW-2, Shri Paramjeet Singh who has stated that the petitioner has worked for 183 days in 2000 and 180 days in 2001 and in order to calculate the working days of the petitioner if we club the mandays for the year 2000-01, the petitioner has put in 363 days with the respondent preceding his termination. It is significant to note that no notice nor compensation was paid to the petitioner at the time of his termination which is clear violation of section 25F of the Industrial disputes Act, 1947.

15. Now, turning to the affidavit Ex. RA as sworn by the petitioner and submitted to the respondent and the petitioner has stated on oath therein that he has been engaged as supervisor by the BDO and he shall have no objection in case his services be terminated when it is no more required. For sake of arguments, even if the contents of the affidavit Ex. RA are taken on record to be true and correct even then the respondent cannot restrain him from exercising his legal right as the petitioner has put in more than 240 working days in twelve calendar months preceding his termination and has acquired a right to be given notice and compensation of one month's pay in lieu thereof under section 25F of the Industrial Disputes Act, 1947 and obviously therefore, the services of the petitioner cannot be terminated without serving notice under section 25F and without payment of compensation in lieu thereof even if the petitioner has executed an affidavit Ex. RA and as such I am of the firm opinion that affidavit Ex. RA is of no help to the respondent and is hereby rejected.

16. Thus, having regard to the entire evidence on record and having regard to the fact that the petitioner had completed more than 240 working days in twelve calendar year preceding his termination, hence I have no hesitation in coming to the conclusion that the services of the petitioner were illegally terminated w.e.f. 1.6.2001 by the respondent without complying the provisions of Industrial Disputes Act, 1947. Accordingly, issue no.1 is decided in favour of petitioner and against the respondent.

Issue No. 2.

17. Since I have held under issue no. 1 above, the services of petitioner have been illegally terminated by the respondent without complying with the provisions of Industrial Disputes Act, 1947, hence the petitioner is held entitled for reinstatement in service alongwith seniority and continuity from the date of his illegal termination. However, the petitioner is not entitled to back wages as he has not placed any material on record to substantiate that he was not gainfully employed after his termination. Accordingly, issue no.2 is decided in favour of the petitioner and against the respondent.

Issue No. 3

18. In support of this issue, no evidence was led by the respondents nor it was pointed out during the course of arguments as to how it is not maintainable. However, I find nothing wrong with this petition which is perfectly maintainable in the present form. Accordingly, issue no.3 is decided in favour of the petitioner and against the respondent.

Issue No .4.

19. In support of this issue, no evidence was led by the respondent nor it was pointed out during the course of arguments as to who are the other necessary parties left to be impleaded in the petition. Accordingly, issue no.4 is decided in favour of the petitioner and against the respondent holding that the petition is not bad for non joinder of necessary parties.

Issue No. 5.

20. In support of this issue, no evidence was led by the respondent being the legal issue. However, I have scrutinized the record of the case and observed that since the petitioner was illegally terminated from service without complying with the provisions of section 25F of the Industrial Disputes Act, 1947, hence I hold that petitioner has enforceable cause of action to file this petition. Accordingly, this issue is decided in favour of the petitioner and against the respondent.

RELIEF

As a sequel to my above discussion and findings on issues no.1 to 5, the claim of the petitioner succeeds and is hereby allowed and the petitioner is ordered to be reinstated in service forthwith from the date of his illegal termination with seniority and continuity but without back wages as the petitioner has not placed any material on record to substantiate that he was not gainfully employed after his termination and as such the reference is ordered to be answered in affirmative. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced in the open court today on this day of 21st July, 2009 in the presence of parties.

By order,
J. S. MAHANTAN,
Presiding Judge

**IN THE COURT OF JAGMOHAN SINGH MAHANTAN, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT, SHIMLA CAMP AT NAHAN**

Ref no. 79 of 2006.
Instituted on. 30.5.2006
Decided on. 23.7.2009.

Sita Ram S/o Shri Mahant Ram R/o Village Gorkhuwala, Tehsil Paonta Sahib, District Sirmour, HP.

...Petitioner.

Vs.

The Senior Executive Engineer (E) Electrical Division, HPSEB, Paonta Sahib, District Sirmour, HP.

...Respondent.

Reference under Section 10 of the Industrial Disputes Act, 1947.

For petitioner : Shri A.K Gupta, Ld. Csl.

For respondent : Shri Kuldeep Rathore, Ld. Csl.

AWARD

1. The following reference has been received from appropriate government by this court for adjudication:

“Whether the retrenchment of Shri Sita Ram s/o Shri Mahant Ram workman by the Sr. Executive Engineer, (E) Division HPSEB Paonta Sahib District Sirmour, HP w.e.f. 30.10.02 vide notice dated 1.10.02 (Copy enclosed) without complying with the provisions under section 25F of the Industrial disputes Act, 1947 is proper and justified? If not, what relief of service benefits and amount of compensation, the above aggrieved workman is entitled to?”

2. The petitioner has filed a statement of claim asserting therein that he was engaged under the respondent in the year 1976, who had completed 240 days of service in many years and acquired the status of temporary employee after completion of 240 days of service in a year and as per the standing order as well as the Industrial disputes Act and the services of the petitioner could not be dispensed with without following the due procedure of law but no notice nor compensation was paid to him and even the principle of last come first go was not followed while disengaging the services of the petitioner and against this injustice, the petitioner approached the Administrative Tribunal which ordered the reengagement of the petitioner and that since 1996, the petitioner was working continuously under the respondent employer but again his services were disengaged on 31st October, 2002 without following the due procedure of law and that the termination of the services of the petitioner amounts to retrenchment in law which is not sustainable in the eyes of law and that the mandatory provisions of section 25F as well as the standing orders have not been followed by the respondent as no notice nor compensation was given to the petitioner and that the persons junior to the petitioner are still continuing with the respondent and that the respondent has also violated the provisions of section

25H of the Industrial disputes Act, 1947 as the petitioner was not asked to resume his duties and that the retrenchment of the petitioner is basically wrong as lot of work is available with the respondent and as such the retrenchment of the petitioner amounts to unfair labour practice and that the petitioner is on the road from his termination, who is not gainfully employed any where and as such prayed for reinstatement with all benefits incidental thereof alongwith seniority, regularization and back wages with interest @ 9%, hence this claim.

3. The respondent resisted and contested the claim of the petitioner, which filed reply interalia raising preliminary objections of maintainability and time barred. On merits, it is contended that the petitioner was engaged for specific period against the specific work in the year 1976, who left the job of his own and did not return to his duties whose services were disengaged on 30.10.2002 after completing the codal formalities and that the mandatory provisions of section 25 as well as standing orders were strictly followed and no junior person was engaged by the respondent and the seniority of the workmen was maintained as per the screening committee. It is also contended that the petitioner had worked with the respondent with certain breaks and after 30.10.2002, the petitioner never turned up and as such prayed for the dismissal of the claim.

4. In the rejoinder, the petitioner controverted the assertions made in the reply and reiterated and reaffirmed the averments of the petition.

5. The following issues were framed by this court on 24.8.2007 on the pleadings of the parties.
 1. Whether the retrenchment of the petitioner w.e.f. 30.10.2002 without complying the provisions of I.D Act, 1947 is illegal? If so, its effect? ...OPP.
 2. If issue no.1 is proved in affirmative, to what relief the petitioner is entitled to? ...OPP.
 3. Whether this court has no jurisdiction and the claim is not maintainable? ...OPR.
 4. Whether the petition is barred by limitation? ...OPR.
 5. Relief.

6. I have heard the Ld. Counsels for the parties and have gone through the record of the case.

7. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings on the aforesaid issues are as under:

Issue no.1	Yes.
Issue no.2	Entitled for reinstatement in service with seniority and continuity but without back wages.
Issue no.3	No.
Issue no.4	No.
Relief.	Reference answered in affirmative per operative part of award.

REASONS FOR FINDINGS

Issue No. 1.

8. Coming to this issue, the petitioner has examined himself as PW-1, who has stated that he was engaged as beldar on daily wages in Jan. 1975 and continued as such till November, 1976, who was reengaged in 1976 and continued as such till 2002 and then he was terminated from service without notice and compensation, who had completed 240 working days in every calendar year preceding his termination and as such prayed for reinstatement in service alongwith wages, seniority and continuity. He is still unemployed and his colleagues S/Shri Jagdish, Phool Singh, Gulzari and Sita Ram have been made regular by the respondent and he never abandoned the job of his own.

9. To rebut the case of the petitioner, the respondent has examined Er. Parmod Kumar as RW-1, who has stated that he is posted as an Assistant Engineer at Solan since November, 2008 and is well conversant with the facts of the case. The petitioner was engaged as beldar in 1976 and worked till 30.10.2002, who filed a petition before the Administrative Tribunal Shimla and obtained stay orders to continue in service in 1996 on the basis of which, he continued upto 2002 and when the stay was vacated for want of jurisdiction, then notice of termination was given to the petitioner for one month alongwith compensation of Rs. 1,630/- which was not accepted by the petitioner and no junior to the petitioner was engaged nor continuing in service and proved the mandays chart of the petitioner Ex. RA.

10. The case of the petitioner is that he being daily wages beldar having worked for more than 240 days in each calendar year preceding his termination, who was orally terminated from service by the respondent as no notice

nor any compensation was paid to him and even juniors to him are still working with the respondent, hence he is liable to be reinstated in service with all consequential benefits.

11. On the contrary, the respondent contends that the petitioner had not completed 240 working days in twelve calendar months preceding his termination and even no junior to the petitioner is working with the respondent and moreover, the petitioner was legally terminated from service after giving notice alongwith compensation of Rs. 1,630/- and as such the petitioner is not entitled to any relief as prayed by him.

12. I have considered the respective contentions of both the parties and have scrutinized the record of the case.

13. After the close scrutiny of the record of the case, it is clear that the petitioner was engaged as beldar on daily wages by the respondent. It is also proved on record that the petitioner has completed more than 240 working days in many years and also in twelve calendar months preceding his termination as per mandays chart Ex. RA placed on record and as such the case of the petitioner squarely falls under section 25F of the Industrial disputes Act, 1947.

14. Now, turning to the legal aspect of the case, the respondent has tried to establish on record that one month notice and compensation of Rs. 1,630/- was given to the petitioner but the respondent has failed to place that notice and receipt of compensation on record which fact has also admitted by RW-1 Er. Parmod Kumar, who has admitted in his cross examination that no notice alleged to have been sent to the petitioner is placed on record and as such an adverse inference is drawn against the respondent, who have failed to place on record the alleged notice and payment of compensation. However, **Section 25-F of the 'Act' says that:**

25-F. CONDITIONS PRECEDENT TO RETRENCHMENT OF WORKMEN.- No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until—

- (a) **the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;**
- (b) **the workman has been paid, at the time of retrenchment compensation which shall be equivalent of fifteen days' average pay (for every completed year of continuous service) or any part thereof in excess of six months; and**
- (c) **notice in the prescribed manner is served on the appropriate government (or such authority as may be specified by the appropriate Government by notification in the Official Gazette.)**

15. In the instant case, the respondent has failed to comply with the provisions of section 25F properly which has not served the legal notice upon the appropriate government by notification in the official gazette as envisaged under section 25F of the Industrial Disputes Act, 1947 nor paid the compensation in lieu thereof to the petitioner which is illegal, unjust and improper.

16. Thus, having regard to the entire evidence on record and having regard to the fact that the petitioner had put in more than 240 working days in many years and also in twelve calendar months preceding his termination, hence I have no hesitation in coming to the conclusion that the services of the petitioner were illegally terminated w.e.f. 30.12.2002 by the respondent without complying the provisions of Industrial Disputes Act, 1947. Accordingly, issue no.1 is decided in favour of petitioner and against the respondent.

Issue No. 2.

17. Since I have held under issue no. 1 above that the services of petitioner have been illegally terminated by the respondent without complying with the provisions of Industrial Disputes Act, 1947, hence the petitioner is held entitled for reinstatement in service alongwith seniority and continuity from the date of his illegal termination. However, the petitioner is not entitled to back wages as he has not placed any material on record to substantiate that he was not gainfully employed after his termination. Accordingly, issue no.2 is decided in favour of the petitioner and against the respondent.

18. In support of this issue, no evidence was led by the respondent being the legal issue. However, I have scrutinized the record of the case and observed that the petitioner being a daily wages worker having worked with the respondent for more than 240 working days in every calendar year and also in twelve calendar months preceding his termination, who was illegally terminated by the respondent without following the provisions of Industrial disputes Act, 1947 has got jurisdiction to try this reference. Apart from it, no evidence was led by the respondent on the point of maintainability of this reference. However, I find nothing wrong with this reference which is perfectly maintainable in the present form. Accordingly, issue no.3 is decided in favour of the petitioner and against the respondent.

Issue No. 4.

19. In support of this issue, no evidence was led by the respondent being the legal issue. However, I have scrutinized the record of the case and observed that there is no limitation under the Industrial Disputes Act, 1947 as it was held by their lordship of *Hon'ble Supreme Court reported in (1999) 6 SCC 82 case titled as Ajayab Singh Vs. Sirhind Co-operative Marketing –cum- processing Service Society Limited and Another* in which it was held that:-

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”

Accordingly, on the strength of this ruling, it can safely be concluded that there is no limitation under the Industrial Disputes Act, 1947. Accordingly, issue no.4 is decided in favour of the petitioner and against the respondent.

RELIEF

As a sequel to my above discussion and findings on issues no.1 to 4, the claim of the petitioner succeeds and is hereby allowed and the petitioner is ordered to be reinstated in service forthwith from the date of his illegal termination with seniority and continuity but without back wages as the petitioner has not placed any material on record to substantiate that he was not gainfully employed after his termination and as such the reference is ordered to be answered in affirmative. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced in the open court today on this day of 23rd July, 2009 in the presence of parties counsels.

By order,
J. S. MAHANTAN,
Presiding Judge

**IN THE COURT OF JAGMOHAN SINGH MAHANTAN, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT, SHIMLA AT CAMP COURT NAHAN**

Ref no. 64 of 2008.
Instituted on. 28.11.2008
Decided on. 23.7.2009.

Vir Dutt, S/o Shri Surat Ram R/o Village Thanga, P.O Devna, Sub Tehsil Nohradhar, District Sirmour, HP.

...Petitioner.

Vs.

The Executive Engineer, IPH Division, Nahan District Sirmour, HP.

...Respondent.

Reference under Section 10 of the Industrial Disputes Act, 1947.

For petitioner: Sh. A.K. Gupta, Ld. Csl.

For respondent: Sh. Jagdish Kanwar, Ld. DDA.

AWARD.

1. The following reference has been received from appropriate government by this court for adjudication:

“Whether the termination of the services of Shri Vir Dutt S/o Shri Surat Ram by the Executive Engineer, IPH Division, Nahan Distt. Sirmour, HP w.e.f. 1.5.1996 without complying the provisions of Industrial Disputes Act, 1947 and retaining his junior workmen is proper and justified? If not, what relief of service benefits and compensation the above worker is entitled to?”

2. The petitioner has filed a statement of claim asserting therein that he was engaged as daily waged beldar in the IPH Division, Nahan and he worked w.e.f. 1.1.1995 to April, 1996 and then his services were dispensed with by the respondent without following the mandatory provisions of the Industrial disputes Act, 1947 as no notice nor compensation was paid to the petitioner and even the principle of last come first go was not followed by the respondent and the persons junior to the petitioner are still working in the division and the seniority list of the daily wages workmen is prepared at the Divisional level and many persons junior to the petitioner are still serving. The petitioner had completed 240 days of service for the application of section 25F of the Act and that the termination of the petitioner amounts to retrenchment and that the action of the respondent in disengaging the services of the petitioner is highly unjustified and arbitrary which amounts to unfair labour practice and as such prayed for reinstatement with seniority and back wages, hence this claim.

3. The respondent resisted and contested the claim of the petitioner, which filed reply interalia contending that the petitioner was engaged on daily wages basis w.e.f. 1.1.1995, who worked intermittently with the respondent upto 30.4.1996, who worked for 196 days in 1995 and 88 days in 1996, who left the job of his own, hence the principle of last come first go does not arise at all and also the question for working the junior persons does not arise. It is denied that the petitioner had completed 240 days in his service. It is also contended that the department never terminated the services of the petitioner, hence no injustice has been caused to the petitioner and that the Gram Panchayat Pardhan and Secretary of Devena Panchayat, Block Sangrah, Sub Tehsil Nohradhar Distt. Sirmour, HP has given a certificate regarding the employment of the petitioner and as such the petitioner was employed in the Panchayat as beldar w.e.f. 6.4.2007 in WSS Thanga Rondi for which the wages @ 750/- has been paid by the respondent department and as such prayed for the dismissal of the claim.

4. No rejoinder filed. The following issues were framed by this court on 27.3.2009 on the pleadings of the parties.

1. Whether the termination of services of petitioner by the XEN IPH division Nahan w.e.f. 1.5.1996 without complying the provisions of Industrial Disputes Act, 1947 and retaining his junior workmen is improper and unjustified as alleged? ...OPP.
2. If issue no.1 is proved, to what relief of service benefits and amount of compensation, the petitioner is entitled to? ...OPP.
3. Whether the petitioner has left the job of his own? If so, its effect? ...OPR.
4. Relief.

5. I have heard the Ld. Counsel for petitioner and Ld. DDA for respondent and have gone through the record of the case.

6. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings on the aforesaid issues are as under:

Issue no.1	No.
Issue no.2	Not entitled to any relief.
Issue no.3	Yes.
Relief.	Reference answered in negative per operative part of award.

REASONS FOR FINDINGS.

Issue No. 1.

7. Coming to this issue, the petitioner has examined himself as PW-1, who has stated that he was engaged as beldar on daily wages by XEN IPH Nohradhar on 1.1.1995 and worked for eight months in 1995 and four months in 1996 and then he was terminated from service by the respondent without notice and compensation, who had completed

241 days in the calendar year preceding his termination and as such prayed for reinstatement in service with all consequential benefits including back wages and he is still unemployed and he never abandoned the job of his own.

8. To rebut the case of the petitioner, the respondent has examined RW-1 Er. G.D Thakur, who has stated that he is posted as an Assistant Engineer, IPH, Nohradhar since 8.5.2008 and he is well conversant with the facts of the case. The petitioner was engaged as beldar on 1.1.1995 on daily wages and worked till 30.4.1996 with breaks and the petitioner was never terminated from service, who himself abandoned the job, who is working as beldar with Gram Panchayat Devna since 6.4.2007 and proved the mandays chart of the petitioner Ex. RA and the employment certificate of Secretary Gram Panchayat is Ex. RB. No junior to the petitioner was engaged by the respondent.

9. The case of the petitioner is that he being the daily wages beldar having completed 240 working days in each calendar year and also twelve calendar months preceding his termination, who was illegally terminated from service without any reason and no notice nor compensation was paid to him at the time of his removal and even juniors to him are still working with the respondent and as such he is entitled for reinstatement with all consequential benefits.

10. On the contrary, the respondent contends that the petitioner was engaged as daily wages beldar, who had not completed 240 working days in twelve calendar months preceding his termination, who was never terminated from service but he left the job of his own and even no junior to the petitioner was engaged by the respondent, hence the petitioner is not entitled to any relief as claimed by him.

11. I have considered the respective contentions of both the parties and have scrutinized the record of the case.

12. After the close scrutiny of the record of the case, it remains a fact that the petitioner was engaged by the respondent as daily wages beldar, who worked with the respondent w.e.f. 1/1995 4/1996 as per mandays chart Ex. RA placed on record. No doubt, that the petitioner has tried to establish on record that he had put in more than 240 working days of continuous service with the respondent but there is nothing on record which could show that the petitioner had worked with the respondent for more than 240 days in each calendar year and also in twelve calendar months preceding his termination. Since the petitioner has failed to prove on record that he had put in 240 working days in twelve calendar months preceding his termination as it stands proved on record that the petitioner had put in 31 days in May, 1995, 28 days in June, 1995, 31 days in July, 1995, 13 days in August, 1995, no days in Sept. October, December 1995 and Jan. 1996, 27 days in Feb. 1996, 31 days in March, 1996 and 30 days in April, 1996 as is evident from the mandays chart Ex. RA placed on record and as such the petitioner had put in only 191 days in twelve calendar months preceding his termination, hence the case of the petitioner does not fall under section 25F of the Industrial Disputes Act, 1947. Moreover, it is well settled that where the workman has not produced any evidence to show that he had worked for more than 240 working days in twelve calendar months preceding his termination and that no evidence has been led in order to show that his juniors are still working with the respondent, the petitioner is not entitled to any protection under the provisions of the Industrial Disputes Act, 1947. Here I am fortified with a view taken by their lordship of Hon'ble Supreme Court in AIR 2006 S.C. 110 case titled as *Surindernagar District Panchyat V/s Dayabhai Amar Singh* in which it was held that:-

“Incase workman claims to have worked for more than 10 years as daily wager. Apart from oral evidence workman has not produced any evidence to prove fact that he has worked for 240 days. No proof of receipt of salary or wages or any record or order in that regard was produced: no co-worker was examined; muster roll produced by employer has not been contradicted. Workman has failed to discharge his burden that he was in employment for 240 days during preceding 12 months of date of termination of his service. Workman not entitled for protection of Section 25-F before his service was terminated.”

13. Now, adverting to the other aspect of the case, the petitioner has not proved on record that junior to the petitioner is still working with the respondent. Thus, having regard to the entire evidence on record, it can safely be concluded that the petitioner has not completed 240 working days in twelve calendar months preceding his termination nor his juniors are proved to be continuing in service after his removal and obviously, therefore, it can safely be concluded that the services of petitioner has not been terminated illegally by the respondent without complying the provisions of Industrial Disputes Act, 1947 and no junior to the petitioner is still continuing with the respondent department. Accordingly issue no.1 is decided in favour of respondent and against the petitioner.

Issue No. 2.

14. Since, I have held under issue no.1 above, that the services of the petitioner has been legally dispensed with by the respondent without notice or compensation, hence the petitioner is not entitled to any service benefits. Accordingly, issue no.2 is answered in negative.

Issue No. 3.

15. In support of this issue, no evidence was led by the respondent except the certificate Ex. RB issued by the Assistant Secretary Gram Panchyat Devena in order to show that the petitioner has been working as beldar since 6.4.2007 and the wages for the months of Sept. 2008 has been paid to the petitioner. It is significant to note that RW-1 G.D Thakur, Assistant Engineer, Norhadhar appeared as RW-1 who has proved the mandays chart of the petitioner Ex. RA and also the copy of certificate Ex. RB but the person who issued the certificate was not examined alongwith the record nor the original certificate has been placed on record and further no disciplinary action was taken by the respondent department against the petitioner nor any domestic enquiry was conducted by the respondent against the petitioner in order to find out the abandonment of the petitioner from the job and obviously therefore, in view of no cogent evidence on the point of abandonment and the reengagement of the petitioner with the Gram Panchayat Devena and further more it was held by our own Hon'ble High Court incase titled as **State of HP & Others Vs. Bhatag Ram & Another as reported in latest HLJ 2007 (HP) 903** in which it was held that:-

“Plea of abandonment of job- merely raising the plea of abandonment is nothing but has to be established on the basis of facts. No facts led to substantiate the plea.”

Thus, having regard to entire evidence on this issue, it can safely be concluded that the petitioner has not abandoned the job of his own. Accordingly, this issue is decided in favour of petitioner and against the respondent.

RELIEF

As a sequel to my above discussion and findings on issues no.1 to 3, the claim of the petitioner fails and is hereby dismissed and the reference is ordered to be answered in negative. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced in the open court today on this day of 23rd July, 2009 in the presence of parties counsels.

By order,
J. S. MAHANTAN,
Presiding Judge

**IN THE COURT OF JAGMOHAN SINGH MAHANTAN, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT, SHIMLA, HP**

Ref no. 137 of 2002.
Instituted on 17.5.2002.
Decided on. 27.7.2009.

1. Amar Chand S/o Shri Jai Ram.
2. Man singh S/o Shri Prabhu Ram.
3. Ram Singh S/o Shri Bishan Singh.
4. Jai Singh S/o Shri Roop Ram.
5. Suresh Kumar S/o Shri Rati Ram.
6. Chander Singh S/o Shri Shiv Ram.
7. Baldev Singh Tulsi Ram.
8. Madan Lal S/o Shri Prem Dass.
9. Lal Chand S/o Shri Sri Ram.

All through Shri J.C Bhardwaj, Gen. Secy. HP AITUC Headquarter Saproon, District Solan, HP ...*Petitioners.*

Vs.

The Executive Engineer, HPSEB, Division Saproon, Distt. Solan HP.

...*Respondent.*

Reference under Section 10 of the Industrial Disputes Act, 1947.

For petitioner : Shri J.C Bhardwaj, Ld. AR
For respondent : Ms. Shilpa Sood, Ld. Csl.

AWARD

1. The following reference has been received from appropriate government by this Court for adjudication:

“Whether the termination of services of Shri Amar Chand beldar and eight other beldars (As per annexure A overleaf) by the Executive Engineer, HPSEB Electrical Division Solan, w.e.f. 26.8.1998 on completion of more than 240 days continuous service without giving any notice or notice pay and retaining the juniors in service is proper and justified? If not, what relief in service benefits including seniority and back wages, the above workmen are entitled to?”

2. The petitioners have filed a joint claim asserting therein that the petitioners were employed by the respondent board in Electrical Division, Saproon. Petitioner no.1 Amar Chand was employed during the month of Sept. 1992, who was removed from the employment on 26.8.1998, petitioner no.2 Man Singh was employed during the month of April, 1994, who was removed on 26.8.1998, petitioner no.3 Ram Singh was employed during the month of December, 1993, who was removed on 26.8.1998, petitioner no.4 Jai Singh was employed during the year 1986, who was removed on 28.8.1998, petitioner no.5 Suresh Kumar was employed on 26.4.1995, who was removed on 13.7.1998, petitioner no.6 Chander Singh was employed on 26.4.1995, who was removed on 13.7.1998, petitioner no.7 Baldev Singh was employed in the month of October, 1993, who was removed on 13.7.1998, petitioner no.8 Madan Lal was employed on 1.1.1994, who was removed on 13.7.1998 and the petitioner no.9 was employed during the month of June, 1996, who was removed on 26.8.1998 and all the petitioners were employed as beldar and were in continuous service with the respondent till their removal and even the junior workmen are retained in service by the respondent which is clear violation of section 25G and H of the Industrial Disputes Act, 1947 and that the services of the petitioners were continuous for the purpose of section 25B of the Industrial Disputes Act, 1947 as they have worked for more than 240 days in each year of their employment and that the work of petitioners in their service tenure was neat and clean and that the respondent board did not comply with the mandatory and statutory norms for the retrenchment of the petitioners which is necessary as prescribed under section 25F & N of the Act and the respondent did not serve three months notice nor paid the wages in lieu of that which is invalid, null, void and inoperative as well as nonest in the eyes of law and that the respondent board is a state under article 12 of the constitution of India and that the right of livelihood, its continuity, better and healthy working conditions are recognized rights and that the petitioners are unemployed since the date of their illegal retrenchment as the application of the hire and fire formula made the integrity of the petitioners doubtful in the eyes of one and all and as such prayed for reinstatement with full back wages alongwith all incidental service benefits, hence this claim.

3. The respondent resisted and contested the claim of the petitioner which filed reply inter alia raising preliminary objections of enforceable cause of action, maintainability, time barred and no legal or vested rights of the petitioners have been infringed or violated. On merits, it is contended that petitioner no.1 Amar Chand was initially engaged as a daily rated casual beldar on 14.4.1992, who worked with breaks on specific work from time to time, petitioner no.2 was initially engaged as a daily rated casual beldar on 27.4.1994, who worked with breaks on specific work from time to time, petitioner no.3 Ram Singh was initially engaged as a daily rated casual beldar on 1.1.1994, who worked with breaks on specific work from time to time, petitioner no.4 Jai Singh was initially engaged as a daily rated casual beldar on 15.5.1996, who worked with breaks on specific work from time to time, petitioner no.5 Suresh Kumar was initially engaged as a daily rated casual beldar on 20.2.1996, who worked with breaks on specific work from time to time, petitioner no.6 Chander Singh was initially engaged as a daily rated casual beldar on 26.4.1996, who worked with breaks on specific work from time to time, petitioner no.7 Baldev Singh was initially engaged as a daily rated casual beldar on 26.8.1994, who worked with breaks on specific work from time to time, petitioner no.8, Madan Lal was initially engaged as a daily rated casual beldar on 3.4.1994, who worked with breaks on specific work from time to time, petitioner no.9 Lal Chand was initially engaged as a daily rated casual beldar on 27.5.1996, who worked with breaks on specific work from time to time and that all the petitioners had never completed 240 days continuous service in any calendar year, hence the status of the petitioners remained as casual labourer and they never acquired the status of temporary workmen and that the petitioners were engaged where the work was available with the respondent and that the petitioners were never retrenched by the respondent, who left the job of their own will and that the petitioners were engaged on muster roll against the sanctioned works and for specific work and as such prayed for the dismissal of the claim petition.

4. No rejoinder filed. The following issues were framed by this Court on 18.12.2003 on the pleadings of the parties.

1. Whether the termination of services of the petitioners by the respondent w.e.f 26.8.1998 in violative of sections 25F and 25G of the ID Act, 1947? ...OPP.
2. Whether the petitioners left the job of their own as alleged and if so, its effect? ...OPR.

3. Whether the reference is not maintainable in view of preliminary objections no.1 to 4? ...OPR.

4. Relief.

5. I have heard the Ld. AR for the petitioners and Ld. Counsel for respondent and have gone through the record of the case.

6. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings on the aforesaid issues are as under:

Issue No. 1	No.
Issue No. 2	No.
Issue No. 3	No.
Relief.	Reference answered in negative per operative part of award.

REASONS FOR FINDINGS.

Issue No. 1.

7. Coming to this issue, the petitioners have examined nine PWs in all. Petitioner Amar Chand stepped into the witness box as PW-1, who has stated that he was engaged by the respondent in the year, Sept. 1992 and worked upto 26.8.1998 on which date his services were terminated, who worked continuously and his services were dispensed with without notice and payment of compensation. After his termination, the dispute was raised by giving demand notice Ex. PA on 20.5.1999 under section 2A of the Industrial Disputes Act, 1947 and he also submitted representation Ex. PB to the AEE sub division, Kandaghat for his reengagement and as such prayed for reinstatement with seniority and continuity in service.

8. PW-2 petitioner Man Singh voiced on oath that he was employed by the respondent in April 1994 and worked upto 26.8.1998 on which date his services were terminated, who worked continuously and his services were dispensed with without notice and payment of compensation and as such prayed for reinstatement with seniority and continuity in service.

9. PW-3, petitioner Ram Singh appeared into the witness box, who has stated that he was employed by the respondent in the year December, 1993 and worked upto 26.8.1998. PW-4 petitioner Jai Singh stepped into the witness box, who has stated that he was employed by the respondent in the year 1986 and worked upto 26.8.1998. Petitioner Suresh Kumar stated on oath as PW-5, who has stated that he was employed by the respondent 24.4.1995 and worked upto 13.7.1998. Petitioner Chander Singh examined himself as PW-6, who has stated that he was employed by the respondent on 26.4.1995 and worked upto 13.7.1998. Petitioner Baldev Singh stepped into witness box as PW-7, who has stated that he was employed by the respondent in the year October, 1993 and worked upto 13.7.1998. Petitioner Madan Lal appeared as PW-8, who has stated that he was employed by the respondent on 1.1.1994 and worked upto 13.7.1998. Petitioner Lal Chand stepped into witness box as PW-9, who has stated that he was employed by the respondent in the year June, 1996 and worked upto 26.8.1998. All these petitioners have supported the entire statement of PW-2 Man Singh.

10. On the contrary, no evidence was led by the respondent in rebuttal despite having afforded sufficient opportunities to the respondent and consequently the evidence of the respondent was closed by order of the court.

11. Shri J.C Bhardwaj, Ld. AR for the petitioners has vehemently argued at the very outset that all the petitioners have completed 240 working days in a calendar year preceding their termination and all the petitioners were illegally terminated by the respondent without serving notice under section 25N of the Industrial disputes Act, 1947 and even junior to the petitioners are still working with the respondent and as such the petitioners are also liable to be reinstated in service with all consequential service benefits including back wages.

12. On the contrary, Shri Atul Jhingan, Ld. Vice Csl for respondent controverted the arguments of Shri Bhardwaj and has submitted that the petitioners were never terminated by the respondent at any point of time, who left the job of their own without any intimation to the respondent and all the petitioners have not completed 240 working days in any calendar year and also in twelve calendar year preceding their abandonment and no junior to the petitioners are working with the respondent, hence the petitioners are not entitled to any relief as prayed by them.

13. I have considered the respective contention of the petitioner and have scrutinized the record of the case.

14. After the close scrutiny of the record of the case, it is clear that the petitioners were engaged by the respondent as daily wages worker from time to time which is clear from annexures 1 to 9 placed on record alongwith

reply which clearly go to show that the none of the petitioner has completed 240 working days in twelve calendar months preceding their termination which fact was not disputed by Shri J.C Bhardwaj at the time of arguments whose only grouse is that though the petitioners have completed 240 working days in earlier calendar years and as such the petitioners must have been served with notice for three months and payment of compensation in lieu thereof under section 25N of the Industrial Disputes Act, 1947. Moreover, the respondent has proved on record that the petitioners have not completed 240 working days in twelve calendar months preceding their termination. Thus, it is clear that the petitioners have not worked with the respondent for 240 days in twelve calendar months preceding their termination nor it is proved on record that the juniors to the petitioners are still continuing with the respondent by ignoring the petitioners for the reasons best known to the respondent. Moreover, It is well settled that where the workman has not produced any evidence to show that he had worked for more than 240 working days preceding their termination and that no evidence has been led in order to show that their juniors are still working with the respondent, the petitioners are not entitled to any protection under the provisions of the Industrial Disputes Act, 1947. Here I am fortified with a view taken by their lordship of Hon'ble Supreme Court in AIR 2006 S.C. 110 case titled as *Surindernagar District Panchyat V/s Dayabhai Amar Singh* in which it was held that:-

“In case workman claims to have worked for more than 10 years as daily wager. Apart from oral evidence workman has not produced any evidence to prove fact that he has worked for 240 days. No proof of receipt of salary or wages or any record or order in that regard was produced: no co-worker was examined; muster roll produced by employer has not been contradicted. Workman has failed to discharge his burden that he was in employment for 240 days during preceding 12 months of date of termination of his service. Workman not entitled for protection of Section 25-F before his service was terminated.”

15. Thus, having regard to the entire evidence on record and on the strength of above cited ruling, it can safely be concluded that the petitioners have miserably failed to prove on record that they have completed 240 working days in twelve calendar months preceding their termination nor their juniors are proved to be continuing in service with the respondent and as such I hold that the termination of services of the petitioners by the respondent w.e.f. 26.8.1998 is not violative of section 25F & 25G of the Industrial Disputes Act, 1947 Accordingly, issue no.1 is decided in favour of the respondent and against the petitioners.

Issue No. 2

16. In support of this issue, no evidence was led by the respondent nor it was pressed during the course of arguments. Since there is nothing on record which could go to show that the petitioners had abandoned the job of their own as no explanation, domestic enquiry and letter was written to the petitioners to resume their duties and as such it does not lie in the mouth of the respondent to say that the petitioners have abandoned the job of their own. Moreover, it is well settled in *State of HP & Others Vs. Bhatag Ram & Another as reported in latest HLJ 2007 (HP) 903* in which it was held that:-

“Plea of abandonment of job- merely raising the plea of abandonment is nothing but has to be established on the basis of facts. No facts led to substantiate the plea.”

Since there is nothing on record which could show that the petitioners have abandoned the job of their own, hence I hold issue no.2 in favour of the petitioners and against the respondent holding that the petitioners have not abandoned the job of their own.

Issue No. 3.

17. In support of this issue, no evidence was led by the respondents being the legal issue. However, I find nothing wrong with this reference which is perfectly maintainable. Accordingly, issue no.3 is decided in favour of the petitioners and against the respondent.

RELIEF

As a sequel to my above discussion and findings on issue no.1 to 3 above, the claim of the petitioners fails and is hereby dismissed and as such the reference is ordered to be answered in negative. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced in the open court today on this day of 27th July 2009 in the presence of parties counsels.

By order,
J. S. MAHANTAN,
Presiding Judge

IN THE COURT OF JAGMOHAN SINGH MAHANTAN, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA

Ref no. 88 of 2006.
Instituted on. 9.6.2006
Decided on. 27.7.2009.

Hari Singh S/o Shri Laku Ram, through Shri J.C Bhardwaj, President, HP AITUC H.Q Saproon Solan District Solan, HP. ...Petitioner.

Vs.

1. The Divisional Manager, HRTC, Hamirpur, District Hamirpur, HP.
2. The Regional Manager, HRTC Nalagarh, District Solan, HP. ...Respondents.

Reference under Section 10 of the Industrial Disputes Act, 1947.

For petitioner : Shri J.C Bhardwaj, Ld. AR
For respondent : Shri Rajesh Verma, Ld. Csl.

AWARD

1. The following reference has been received from appropriate government by this court for adjudication:

“Whether the termination from service w.e.f. 22.7.1998 of Shri Hari Sing S/o Shri Laku Ram Driver by the Divisional Manager HRTC Hamirpur Division, Hamirpur vide order dated 21.7.1998 without holding any enquiry to the charge sheet dated 5.3.1998 is legal and justified? If not, what seniority, back wages and service benefits, the concerned driver is entitled to?”

2. The petitioner has filed a statement of claim asserting therein that he was appointed as driver vide letter no. DM-(N) 1-353-E/76 (O-6245) dated 13.7.1977, who remained in the employment of respondent as permanent regular employee till his illegal retrenchment on 21.7.1998, who was very senior driver at the time of retrenchment, who was retrenched on the ground of loss of confidence which was not proved by the respondent as the services were terminated without holding any enquiry as per the law of natural justice, without second show cause notice and without affording any opportunity to the petitioner to putforth his position and that services of the petitioner were terminated due to the accident on 24.2.1998 against which the FIR was lodged in P.S Kasauli and the services were terminated without waiting for the judgment of Court for which the petitioner was being tried under section 279, 337, 338 and 201 of the IPC and the petitioner was acquitted from the offence and there were no disciplinary departmental proceedings initiated against the petitioner, hence the case of the petitioner covered under section 2 (oo) of the Act. The corporation did not comply with the statutory provisions of I.D Act, 1947 and that the retrenchment order under the provisions of section 25F of the Act is illegal, null, void and inoperative as the corporation covered under section 25N of the Act and the corporation did not serve the petitioner with three months notice nor paid the wages in lieu of that and that the retrenchment compensation was payable for the salary equivalent to ten & half months and it should have been Rs. 56,950/- but the respondent had paid only Rs. 37,944/- which is less by Rs. 19,006/- and as such the compensation is invalid and that the corporation was bound to pay three months salary as per the statutory provisions of section 25N of the Act and that the corporation was bound to pay the gratuity to the petitioner as the petitioner has rendered more than 21 years of service with the respondent and that the services of the petitioner were continuous for the purpose of section 25B of the Act as the petitioner has completed more than 240 days in the actual employment with the respondent in each year of his service tenure and that prior to the retrenchment, a show cause notice was served upon the petitioner but it lacked the factum of domestic enquiry or its outcome and the notice was served upon the petitioner on 5.3.1998 which was replied on 28.3.1998 which was based on the technical reasons, rainy weather and kacha muddy road due to that the bus was skidded of the road but no one was injured due to the safe driving of the petitioner and as such the retrenchment was arbitrary and imaginary as the right of livelihood, its continuity, better and healthy working conditions are recognized by the Hon'ble Supreme Court and that there was no departmental charges framed against the petitioner and the retrenchment was ordered under section 200 of the Act and that the retrenchment dated 21.7.1998 be treated as nonest in the eyes of law and the petitioner be deemed in continuous service till the date of his superannuation and that the petitioner be ordered to be paid the encashment of earned leave and gratuity alongwith pensionary benefits as per the provisions of the superannuation and as such prayed for reinstatement with retrospective effective i.e from 21.7.1998 with full back wages, seniority and other consequential benefits till the date of his superannuation, hence this claim.

3. The respondent resisted and contested the claim of the petitioner, which filed reply interalia raising preliminary objections of maintainability, the petitioner does not fall within the definition of a workman and barred by delay and laches. On merits, it is contended that the petitioner was appointed on 13.7.1977, who was removed from service on 21.7.1998 after following the due procedure of law and the petitioner was given due opportunities to put forth his case and that FIR was lodged against the petitioner in which he was acquitted. It is also contended that a show cause notice was served on the petitioner which was replied by him and after considering the reply of the petitioner and the past acts for which the petitioner had been panelized as many as 21 times for misbehavior, negligence in the performance of duty, wilful absence from duty and destruction of official record etc., the services of the petitioner were terminated in accordance with law as the corporation had lost faith in the petitioner. It is also contended that the acquittal of the petitioner would not have any effect on his disciplinary proceeding as both the proceedings are independent and the benefits under section 25F of the Act had been given to the petitioner and the petitioner was not covered under principle of first come last go as he was a driver and it was his duty to drive the vehicle with all the cautions, who was found under the influence of liquor which resulted into accident, hence the services of the petitioner were rightly terminated under the provisions of section 25F of the I.D. Act, 1947 and all the benefits as envisaged under section 25F of the Act are paid to the petitioner. It is admitted that show cause notice was served upon the petitioner and the same was replied by him and after considering his reply, the penalty of removal from service was passed by the competent authority and as such the petitioner is not entitled to any benefits as claimed by him and as such prayed for the dismissal of the claim.

4. In the rejoinder, the petitioner controverted the assertions made in the reply and reiterated and reaffirmed the averments of the petition.

5. The following issues were framed by this court on 20.7.2007 on the pleadings of the parties.

1. Whether the services of the petitioner has been illegally terminated without holding any enquiry? If so, its effect? ...OPP.
2. If issue no.1 is proved in affirmative, to what relief, the petitioner is entitled to? ...OPP.
3. Whether the claim is barred by limitation and is not maintainable? ...OPR.
4. Relief.

6. I have heard the Ld. AR for the petitioner and Ld. Counsel for the respondent and have gone through the record of the case.

7. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings on the aforesaid issues are as under:

Issue No. 1	Yes.
Issue No. 2	Entitled to all pensionary benefits from the date of his pension but without back wages.
Issue No. 3	No.
Relief.	Reference answered in affirmative per operative part of award.

REASONS FOR FINDINGS

Issue No. 1.

8. Coming to this issue, the petitioner has examined himself as PW-1, who has stated that he was appointed as driver on 13.7.1977 and continued as such till 21.7.1998, who was retrenched from service as he met with an accident due to skidding of bus on kaccha road but no passengers sustained injuries in accident and no passenger had lodged the complaint against him. An FIR was lodged by the HRTC against him and he was tried by Ld. ACJM, Solan and he was acquitted in this case and proved the certified copy of judgment Ex. PA. The show cause notice Ex. PB was issued to him at the time of his retrenchment and he was given retrenchment compensation but no gratuity was paid to him. He had put in 21-22 years of service. No pension was granted to him by the respondent and as such prayed for retirement gratuity and pension keeping in view the service put in by him.

9. To rebut the case of the petitioner, the respondent has examined RW-1 Shri M.R Verma, who has stated that he retired as Divisional Manager, HRTC on 31.10.1999 and is well conversant with the facts of the case. The petitioner was working as Driver in Nalagarh depot of HRTC and on 24.2.1998, the petitioner while driving HRTC bus

caused an accident as a result of which the FIR Ex. RB was registered against him, who was found under the influence of liquor at the time of accident, who left the bus after the accident then they issued show cause notice Ex. PB to the petitioner for loss of confidence as he was involved in 21 cases during the tenure of his service. The petitioner submitted his reply Ex. RA and after considering his reply, he was terminated from service by giving him a notice Ex. RC and compensation in lieu thereof and the petitioner has received a cheque for Rs. 43,422/- dated 6.8.1998 vide registered letter.

10. The case of the petitioner is that he being the regular driver of the respondent having been completed 240 working days in each calendar year, who was condemned unheard and illegally terminated from service without holding any enquiry as no opportunity of being heard was afforded to him at the time of his removal and as such he is also entitled to all consequential service benefits alongwith pensionary benefits.

11. On the contrary, the respondent contends that the petitioner was terminated after giving him all the benefits under section 25F of the Industrial Disputes Act, 1947 as he involved in 21 cases during the tenure of his service and even full opportunity was granted to him to defend his case, hence the petitioner is not entitled to any relief as prayed by him.

12. I have considered the respective contentions of both the parties and have scrutinized the record of the case.

13. After the close scrutiny of the record of the case, it is clear that the petitioner was a regular driver of respondent corporation having service of 21-22 years, who was removed from service by the respondent as the petitioner was found at fault while driving HRTC bus caused accident against which the FIR was lodged against the petitioner, who was acquitted from that charge by Ld. A.C.J.M Kasauli but the respondent had given the notice under section 25F of the Industrial Disputes Act, 1947 alongwith compensation of Rs. 43,424/- in lieu thereof which fact is not disputed by both the parties. Now turning to the other aspect of the case, the respondent has tried to establish on record that the petitioner was terminated after complying with the provisions of section 25F of the Act but it remains a fact that no domestic enquiry was conducted against the petitioner and without holding any enquiry and without getting the petitioner medically checked up from the Medical Officer concerned at the relevant time in order to find out whether the petitioner was under the influence of liquor which resulted into accident by driving the HRTC bus rashly and negligently but without having any material on record to show that the petitioner driver was drunk and was driving the bus rashly and negligently which resulted into accident, the respondent proceeded to hold the petitioner at fault especially when the criminal court presided over by Ld. A.C.J.M Kasauli did not find the petitioner guilty and acquitted him of the charge vide his judgment dated 27.9.2003Ex. PA placed on record and consequently he was removed from service for the reasons best known the respondent corporation which cannot be made the basis for removal of the petitioner from the service and even RW-1 Shri M.R Verma has admitted in his cross examination that no enquiry was conducted against the petitioner in this case as it was spot enquiry and as such the respondent has failed to give an opportunity of being heard to the petitioner which was his constitutional and fundamental right, who rendered more than 21 years of service with the respondent, who was also acquitted by Ld. A.C.J.M Kasauli at Solan from the charges levelled against him as is evident from the judgment of Ld. A.C.J.M Kasauli at Solan Ex. PA placed on record but it does not matter even if the respondent had terminated the services of the petitioner after giving the notice under section 25F and compensation in lieu thereof which is totally illegal, unjustified and against the principle of natural justice. I am not in agreement with the argument of Ld. Counsel for respondent that since the petitioner was reprimanded for 21 past cases, hence the presumption of his guilty can be inferred from his past conduct. It is well settled that it was imperative to follow the principles of natural justice by giving the opportunity to the petitioner to defend his case. It was held in case *titled as Jasbir Singh Vs. Punjab & Sind Bank and others as reported in 2007 LLR 1996 SC* in which it was held that:

“If department proceedings and criminal cases are based on identical set of facts, besides that the evidence is both proceeding is common and the employee is acquitted in criminal case, an order of dismissal already passed may be set aside.”

Similarly, it was held by the *Hon'ble Supreme court in 2000 LAB.I.C incase titled as Nar Singh Pal Vs. Union of India and others* in which it was held that :-

“Where order passed on basis of preliminary enquiry and not on basis of regular departmental enquiry, without issuing a charge sheet or giving opportunity of hearing- being punitive in nature, liable to be set aside and the fact that delinquent encashed cheque of retrenchment compensation is of no consequence.”

13. Thus, having regard to the above cited rulings and in view of the entire evidence on record and the fact that the drivers are workmen as held by the *Hon'ble Supreme Court in Prithpal Singh and Union of India (AIR 1991 SC 915)*, it can safely be concluded that the services of the petitioner were illegally terminated by the respondent

without holding any domestic enquiry against the petitioner and he was condemned unheard for the reasons best known to the respondent corporation. Accordingly issue no.1 is decided in favour of petitioner and against the respondent.

Issue No. 2.

14. Since I have held under issue no. 1 above, the services of petitioner has been terminated wrongly and illegally by the respondent without holding any enquiry. Since the petitioner has attained the age of superannuation, hence the petitioner is entitled to all pensionary benefits including gratuity from the date of his pension but without any back wages. Accordingly, issue no.2 is decided in favour of the petitioner and against the respondent.

Issue No. 3

15. In support of this issue, no evidence was led by the respondents nor it was pressed during the course of arguments. However, I find nothing wrong with this petition which is perfectly maintainable in the present form and there is no limitation under the Industrial Disputes Act, 1947 as it was held by their lordship of **Hon'ble Supreme Court reported in (1999) 6 SCC 82 case titled as Ajayab Singh Vs. Sirhind Co-operative Marketing -cum-processing Service Society Limited and Another** in which it was held that:-

"The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone"

Accordingly, on the strength of this ruling, it can safely be concluded that there is no limitation under the Industrial Disputes Act, 1947 and the petition is perfectly maintainable in the present form and as such issue no.3 is decided in favour of the petitioner and against the respondent.

RELIEF

As a sequel to my above discussion and findings on issues no.1 to 3, the claim of the petitioner succeeds and is hereby allowed as a result of which the petitioner is ordered to be granted all pensionary benefits including gratuity from the date of his pension but without back wages and as such the reference is ordered to be answered in affirmative. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced in the open court today on this Day of 27th July, 2009 in the presence of parties.

By order,
J. S. MAHANTAN,
Presiding Judge

IN THE COURT OF JAGMOHAN SINGH MAHANTAN, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT, SHIMLA

Ref no. 142 of 2006.
Instituted on. 18.11.2006
Decided on. 27.7.2009.

Sant Ram S/o Shri Fisha Ram R/o Satya Niwas, Village Jhinhri, P.O Khalini, District Shimla, HP.

...Petitioner.

Vs.

The Executive Engineer, HPPWD, Division no.1, Shimla-3.

...Respondent.

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner : Shri R.L Sharma, Ld. Csl.

For respondent : Shri Jagdish Kanwar, Ld. DDA.

AWARD

1. The following reference has been received from appropriate government by this court for adjudication:

“Whether the termination of services of Shri Sant Ram S/o Shri Fisha Ram workman by the Executive Engineer, HPPWD, Division no.1, Shimla-3, w.e.f. 1.9.2003 without complying the provisions of Industrial Disputes Act, 1947 is proper and justified? If not, what relief of service benefits and amount of compensation, the above aggrieved workman is entitled to?”

2. The petitioner has filed a statement of claim asserting therein that he was engaged on daily wages basis by the respondent in the month of April, 1996, who was posted as black smith w.e.f. 1.5.1996 to August, 2003, who had worked with the respondent department and completed 299 days in the year 1996, 301 days in 1997, 274 days in 1998, 90 ½ days in 1999 and 15 days in 2000, 225 ½ days in 2002 and 170 days in 2003 and that on 1.9.2003, the respondent verbally terminated the services of the petitioner without any reason and without complying with the provisions of I.D Act, 1947, who requested the authorities for his reengagement but the respondent kept on assuring the petitioner that he shall be called back in service as and when they get sufficient funds and sanction from the higher authorities and that in the year 2003, the petitioner had made elaborate inquiries and had come to know that the respondent had work and funds available with them and they had wrongfully terminated the services of the petitioner and without any reason and then the petitioner approached the Labour-cum-Conciliation Officer and the matter was referred to this Court and that while terminating the services of the petitioner, the respondent has not issued any notice under section 25F of the Industrial disputes Act, 1947 nor any compensation has been paid to him and that the respondent has failed to reengage the petitioner despite his requests whereas new person in place of the petitioner was engaged by the respondent and even no written order for terminating the service of the petitioner was issued by the respondent and as such prayed for reinstatement in service w.e.f. 1.9.2003 alongwith all consequential benefits of back wages, seniority, continuity, hence this claim.

3. The respondent resisted and contested the claim of the petitioner, which filed reply interalia raising preliminary objections of maintainability, abandonment, suppression of material facts, no cause of action, barred by delay and laches and that the petitioner does not fall within the definition of workman. On merits, it is contended that the petitioner was engaged on daily wages basis in the year 1996. It is denied that the petitioner was posted as blacksmith w.e.f. 1.5.1996 to August, 2003. It is also denied that the petitioner had completed 299 days in the year 1996, 301 days in 1997, 274 days in 1998, 90 ½ days in 1999 and 15 days in 2000, 225 ½ days in 2002 and 170 days in 2003. It is also contended that the petitioner was not engaged as per statutory rules, hence the question of his oral termination does not arise at all. It is further denied that the petitioner had made several requests for his reengagement but the petitioner left the job of his own without assigning any plausible cause and that when the statutory provisions of I.D Act are not applicable, hence the issuance of any notice under section 25F of the I.D Act, 1947 does not arise at all and as such prayed for the dismissal of the claim.

4. No rejoinder filed. The following issues were framed by this court on 8.1.2008 on the pleadings of the parties.

1. Whether the service of the petitioner has been illegally terminated w.e.f. 1.9.2003 without complying with the provisions of I.D. Act, 1947? If so, its effect? ...OPP.
2. If issue no.1 is proved in affirmative, to what relief, the petitioner is entitled to? ...OPP.
3. Whether the petition in the present form is not maintainable? If so, its effect? ...OPR.
4. Whether the petitioner abandoned the job and he is not entitled for any relief? ...OPR.
5. Relief.

5. I have heard the Ld. Counsel for the petitioner and Ld. DDA for respondent and have gone through the record of the case.

6. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings on the aforesaid issues are as under:

Issue no.1	Yes.
Issue no.2	Entitled for reinstatement in service with seniority and continuity but without back wages.
Issue no.3	No.
Issue no.4	No.
Relief.	Reference answered in affirmative per operative part of award.

REASONS FOR FINDINGS

Issue no.1 & 4.

7. Both these issues are taken up and discussed together being interlinked and interconnected for sake of convenience and to avoid repetition. Coming to these issues, the petitioner has examined himself as PW-1, who has stated that he was engaged as Blacksmith with the respondent on daily wages in April, 1996 and continued as such till 2000, who was reengaged in 2002 and continued till August, 2003 and then he was terminated from service without notice and without payment of compensation, who had worked for more than 240 working days in a calendar year preceding his termination and as such prayed for reinstatement with all benefits including back wages, seniority and continuity.

8. To rebut the case of the petitioner, the respondent has examined RW-1 Er. B.D Kashyap, who has stated that he is posted as Junior Engineer with respondent since December, 2006 and is well conversant with the facts of the case. The petitioner was engaged as daily wages beldar in May, 1996 by the respondent, who continued as such till April, 1999 and thereafter abandoned the job of his own, who was never terminated by the respondent. The petitioner was reengaged in July, 2000, who worked for fifteen days and then left the job of his own, who again appeared in April, 2002 and worked till 2003 and again left the job of his own and then the petitioner did not resume his duties. The petitioner never approached the department for his reengagement and proved the mandays chart of the petitioner Ex. RA. The petitioner is habitual defaulter in attending his duties. He also brought the muster roll for the period w.e.f. 1.8.2003 to 31.8.2003 Ex. RB, Sept. 2003 Ex. RC and October, 2003 Ex. RD in which the name of the petitioner figured at serial number 13 in Ex. RB against the strength of 40 beldars and the name of the petitioner is not shown in muster roll Es. RC and RD but there was vacancy for petitioner having the same strength of beldars and the claim of the petitioner is false.

9. Shri R.L Sharma, Ld. counsel for the petitioner has vehemently argued at the very outset that since the respondent has admitted the mandays chart Ex. RA to be true and correct and after calculating the twelve calendar months preceding his termination which could show that the petitioner has completed 243 days but no notice nor compensation was paid to the petitioner at the time of his termination and as such his case squarely falls under section 25F of the Industrial Disputes Act, 1947, hence the petitioner is liable to be reinstated in service with all consequential benefits.

10. On the contrary, Shri Jagdish Kanwar, Ld. DDA for respondent controverted the arguments of Shri Sharma and has submitted that the petitioner has miserably failed to prove on record that he had completed 240 working days in twelve calendar months preceding his termination and as such the claim of the petitioner is liable to be dismissed.

11. I have considered the respective contentions of both the parties and have scrutinized the record of the case.

12. After the close scrutiny of the record of the case, it remains a fact that RW-1 Er. B.D Kashyap has proved the mandays chart of the petitioner Ex. RA and the petitioner put in 170 days for nine months from Jan. 2003 to Sept. 2003 and after calculating the previous months from December, 2002 to October, 2002 coupled with nine months of the year 2003 comes to 243 days preceding from the date of the termination of the services of the petitioner. Apart from it, the petitioner has proved on record that no notice nor compensation was paid to him at the time of his termination. Moreover, **Section 25-F of the 'Act' says that:**

25-F. CONDITIONS PRECEDENT TO RETRENCHMENT OF WORKMEN.—No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;
- (b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent of fifteen days' average pay (for every completed year of continuous service) or any part thereof in excess of six months; and
- (c) notice in the prescribed manner is served on the appropriate government (or such authority as may be specified by the appropriate Government by notification in the Official Gazette.)

13. In the instant case, the respondent has failed to comply with the provisions of section 25F properly which has not served the legal notice on the appropriate government by notification in the official gazette as envisaged under section 25F © of the Industrial Disputes Act, 1947. The petitioner has stated on oath that he was engaged as Blacksmith

by the respondent but he has miserably failed to prove on record that he was engaged as Blacksmith, hence this contention of the petitioner is rejected being not proved on record.

14. No doubt, that the respondent has tried to establish on record that the petitioner has abandoned the job of his own and he is habitual defaulter in attending his duties but there is nothing on record which could show that the petitioner himself abandoned the job and is habitual defaulter in attending his duties as no explanation nor any letter was issued to the petitioner about his absence from duties. However, it is well settled in *State of HP & Others Vs. Bhatag Ram & Another as reported in latest HLJ 2007 (HP) 903* in which it was held that:—

“Plea of abandonment of job- merely raising the plea of abandonment is nothing but has to be established on the basis of facts. No facts led to substantiate the plea.”

15. Thus, having regard to the entire evidence on record, it can safely be concluded that the petitioner has completed more than 240 working days i.e 243 days in twelve calendar months preceding his termination, who was terminated from service without any notice and without any compensation and obviously therefore, the case of the petitioner falls under section 25F of the Industrial disputes Act, 1947 and the termination of the petitioner w.e.f. 1.9.2003 without complying with the provisions of Industrial Disputes Act, 1947 is held illegal and unjustified and the petitioner has not abandoned the job of his own. Accordingly, both these issues are decided in favour of petitioner and against the respondent.

Issue No. 2.

16. Since I have held under issue no. 1 above that the services of petitioner have been illegally terminated by the respondent without complying with the provisions of Industrial Disputes Act, 1947, hence the petitioner is held entitled for reinstatement as beldar in service alongwith seniority and continuity from the date of his illegal termination. However, the petitioner is not entitled to back wages as he has not placed any material on record to substantiate that he was not gainfully employed after his termination. Accordingly, issue no.2 is decided in favour of the petitioner and against the respondent.

Issue No. 3

17. In support of this issue, no evidence was led by the respondents nor it was pressed during the course of arguments. However, I find nothing wrong with this petition which is perfectly maintainable in the present form. Accordingly, issue no.3 is decided in favour of the petitioner and against the respondent.

RELIEF

As a sequel to my above discussion and findings on issues no.1 to 4, the claim of the petitioner succeeds and is hereby allowed and the petitioner is ordered to be reinstated in service as beldar with seniority and continuity from the date of his illegal termination. However, the petitioner is not entitled to back wages as he has not placed any material on record to substantiate that he was not gainfully employed after his termination and as such the reference is ordered to be answered in affirmative. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced in the open court today on this days of 27th July, 2009 in the presence of parties counsels.

By order,
J. S. MAHANTAN,
Presiding Judge

IN THE COURT OF JAGMOHAN SINGH MAHANTAN, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL- CUM-LABOUR COURT, SHIMLA

Ref no. 126 of 2006.
Instituted on. 16.10.2006.
Decided on. 29.7.2009.

Mahesh Kumar S/o Shri Tara Chand R/o Village Ded, P.O Kamla Nagar, Tehsil & District Shimla, HP.

...Petitioner.

Vs.

The Divisional Forest Officer, Forest Division (Wild Life) Khalini, Shimla-2.

...Respondent.

Reference under Section 10 of the Industrial Disputes Act, 1947.

For petitioner: Shri J.R. Sharma, Ld. Csl.

For respondent: Shri Jagdish Kanwar, Ld. DDA.

AWARD.

1. The following reference has been received from appropriate government by this court for adjudication:

“Whether the termination of services of Shri Mahesh Kumar S/o Shri Tara Chand workman by the Divisional Forest Officer, Forest Division (Wild Life) Khalini, Shimla-2 w.e.f. 31.3.2000 without complying with provisions of the Industrial Disputes Act, 1947 is proper and justified? If not, what relief of service benefits and amount of compensation, the above workman is entitled?”

2. The petitioner has filed a statement of claim asserting therein that he was initially appointed as daily rated beldar in the year April, 1997 with the respondent and that after his appointment, the petitioner worked at his place of posting where he continued as such till 31.3.2000 on which date he was terminated from service without assigning any reason and during his service tenure, the petitioner worked continuously and had completed 240 days in a calendar year and that the action of the respondent is totally against the settled position of law and the services of the petitioner were terminated without complying with the provisions of section 25B, 25F, 25G and 25H of the Industrial disputes Act, 1947 and that juniors to the petitioner S/Shri Mahender Kumar, Jai Kishan, Dhuni Chand, Jeet Ram, Ishwar Dass, Suraj Parkash, Smt. Prem Lata and Pawan Kumar are still working with the respondent, hence the action of the employer is violative of last come first go and that while terminating the services of the petitioner, the respondent has not issued notice of termination and that the petitioner belongs to a poor strata of the society and has no source of livelihood and that the petitioner was not appointed for the completion of any particular project and the respondent has not issued any appointment letter to the petitioner for particular project, who worked for 275 days in 1997, 365 days in 1998, 365 days in 1999 and 91 days in 2000 and that the petitioner filed an O.A before the Administrative Tribunal which was dismissed for want of jurisdiction and that the respondent terminated the petitioner without serving notice under section 25F, 25G and H of the Industrial Disputes Act and that the respondent has failed to tender retrenchment compensation on account of service rendered by the petitioner to which he was entitled, hence the termination order is bad in law and that the respondent after terminating the services of the petitioner, retained the juniors to the petitioner in job and that the respondent is required to maintain the seniority of the workmen and to offer employment but the respondent failed to discharge its burden and as such prayed for reinstatement in service with retrospective effect alongwith all consequential benefits of back wages, continuity, regularization, promotion and other allied service benefits, hence this claim.

3. The respondent resisted and contested the claim of the petitioner, which filed reply interalia raising preliminary objections that the petitioner was engaged on daily wages basis from April, 1997 in NORAD Project, Wildlife division Shimla where he worked till 31.3.2000 and that the work on which the petitioner engaged was being carried out exclusively under foreign aided project called Eco-Development NORAD Project and since the project has come to a close due to non availability of funds, hence all daily waged labourer including the petitioner were disengaged. On merits, it is contended that the petitioner was engaged on daily wages basis as per need of work w.e.f. April, 1997, who worked till 31.3.2000 and the project was for a period of five years commencing from 1.4.1994 to 1998-99 and the project period was extended by two year upto 2000-2001 and after the completion of the project, the services of all the workmen were to be terminated and that the HP Forest Department cannot be treated as an Industry and that no junior except Shri Duni Chand has been reengaged by the department, who was reinstated by the orders of the Administrative Tribunal, hence the violation of principle of last come first go does not arise at all and as such prayed for the dismissal of the claim petition.

4. In the rejoinder, the petitioner controverted the assertions made in the reply and reiterated and reaffirmed the averments of the petition.

5. The following issues were framed by this court on 23.7.2007 on the pleadings of the parties.

1. Whether service of the petitioner has been illegally terminated w.e.f. 31.3.2000 without complying with the provisions of Industrial Disputes Act, 1947? If so, its effect? ...OPP.
2. If issue no.1 is proved in affirmative, to what relief the petitioner is entitled to? ...OPP.
3. Whether the petitioner was engaged for NORAD Project and his services came to an end with the completion of the Project? ...OPR.
4. Whether the present petition is not maintainable? ...OPR.
5. Relief.

6. I have heard the Ld. Counsel for petitioner and Ld. DDA for respondent and have gone through the record of the case.

7. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings on the aforesaid issues are as under:

Issue No. 1	No.
Issue No. 2	Not entitled to any relief.
Issue No. 3	Yes.
Issue No. 4.	No.
Relief.	Reference answered in negative per operative part of award.

REASONS FOR FINDINGS

Issue No:1 & 3.

8. Both these issues are taken up and discussed together being co-related and interconnected for sake of convenience and to avoid repetition. Coming to these issues, the petitioner has examined himself as PW1, who has stated that he was engaged as daily wages beldar with the respondent at Khalini in April, 1997 and worked till 31.5.2000 and then he was removed from service by the respondent with the assurance that he would be called as and when the work would be available, who worked continuously from April, 1997 to 31.5.2000 without any break, who had worked for more than 240 working days in a calendar year preceding his termination. No notice nor companion was paid to him at the time of his retrenchment. His juniors are still working with the respondent and as such prayed for reinstatement in service with all consequential benefits.

9. To rebut the case of the petitioner, the respondent examined RW1 Shri Daljeet Singh Dhaulta, Forest Range Officer Dhumi, who has stated that he is posted as Forest Range Officer, Dhumi since April, 2008 and is well conversant with the facts of the case, who also remained posted as Forest Range Officer, Wild Life Shimla w.e.f. 1997 to 2000. The petitioner was engaged as daily wages beldar in April, 1997, who continued as such till 31.3.2000 under NORAD Project which was Norway aided project for five years and was extended for two years till 31.3.2000 and all the workmen employed in this project were terminated on the completion of the project and the petitioner was engaged on clear understanding that he would continue till the completion of the project. No juniors to the petitioner were reengaged and one Shri Dhuni Chand was reengaged by the orders of the Administrative Tribunal and S/Shri Mahinder Kumar, Jai Krishan, Jeet Ram and Ishwar Dass were senior to the petitioner whose services were also reengaged by the orders of the Administrative Tribunal. Shri Suraj Parkash, Smt. Prem Lata and Pawan Kumar were not working with the respondent and the application filed by the respondent for vacation of stay orders granted in favour of Dhuni Chand & others before the Administrative Tribunal is still pending and the petitioner's petition was dismissed as withdrawn before the Administrative Tribunal vide order dated 9.8.2004.

10. The case of the petitioner is that he being a daily wager beldar having worked for more than 240 days in many calendar year preceding his termination and even juniors to him are still working with the respondent and as such his termination without following the mandatory provisions of the industrial disputes Act, 1947 is illegal, hence he is entitled to reinstatement with all consequential benefits.

11. On the contrary, the respondent contends that the petitioner was engaged as daily wages casual labourer for seasonal work and for specified period, who was engaged according to need of work and subject to availability of funds, who had not completed 240 working days in any calendar year preceding his termination and no junior to the petitioner is working with the respondent, hence the petitioner is not entitled to any relief as prayed by him.

12. I have considered the respective contentions of both the parties and have scrutinized the record of the case.

13. After the close scrutiny of the record of the case, it remains a fact that the petitioner was engaged as daily wages beldar by the respondent under the NORAD Project which fact has also been admitted by the petitioner in his cross examination that he had received payment of the same project in muster roll. The petitioner has further admitted that the project has been completed in March, 2000 and he was provided with the job till the work was in progress and as such it is clear that the engagement of the petitioner is for specific project, whose services were terminated on the completion of NORAD Project. On the other hand, respondent has proved on record that the engagement of the

petitioner was purely on seasonal work on the availability of the work and funds as daily wages beldar, hence the services of the petitioner stood automatically dispensed with. Moreover, it is well settled in (2006) 6 SCC 221, case titled as *Reserve Bank of India V. Gopinath Sharma & Anr.* in which it was held that :-

“Workman not appointed to any regular post but engaged on the basis of need of work on day to day basis, held, had no right to the post.”

14. Similarly in 2006 (2) SCC 794 in case titled as *Haryana State Agricultural Marketing Board V. Subhash Chand & Anr.* in which it was held that:-

“If nature of service does not come within purview of definition of retrenchment in section 2(oo), question of applicability of section 25-G does not arise. Bare perusal of offer of appointment (set out in para 2 herein) clearly shows that respondent was appointed on seasonal contracts. Hence, respondent not having been reengaged on expiry thereof, he was not retrenched within meaning of section 2(oo), and his case fell exception in section 2(oo)(bb). Hence, section 25-G was inapplicable in his case and dispensing with engagement of respondent cannot be said to be unwarranted in law.”

15. Apart from it, it was further held in case titled as *Punjab State Electricity Board V. Darbara Singh reported in 2006 LLR 68 SC.* and in case titled as *Municipal Council Samrala V. Surhwinder Kaur reported in 2006 LLR 1009 SC.* in which it was held that:-

“Material on record established that engagement of workman was for specific period and as such his termination will be excluded as per the provisions of section 2(oo)(bb) of the I.D Act and hence, no retrenchment compensation will be payable on his termination even when he has worked for more than 240 days in the preceding 12 calendar months.”

16. Now, turning to the other aspect of the case, the petitioner also tried to establish on record that his juniors are still continuing with the respondent department but he did not prove on record that on which date they joined the department and in fact they are juniors to the petitioner especially when it is fully proved on record that the alleged juniors Shri Dhuni Chand & others to the petitioner were reengaged by the order of the Administrative Tribunal against which the application for vacation of stay order is still pending before the Court as is evident from the statement of RW-1 Shri Daljeet Singh Dhaulta, R.O Dhami. On the other hand, the respondent has proved on record that the petitioner was engaged as casual labourer in NORAD Project which was foreign aided project which came to an end in March, 2000 and further the petitioner was engaged for specific work and for specific time as per the need of the work and as such it does not lie in the mouth of petitioner to claim any right over the post which was offered to him for specific period and for specific work till the completion of the Project and therefore, the case of petitioner for his reinstatement cannot be accepted keeping in view the entire facts and circumstances of the case.

17. Thus, on the strength of the above cited rulings and having regard to the evidence on record, it can safely be concluded that the services of the petitioner were not illegally terminated w.e.f. 31.3.2000 by the respondent without complying with the Industrial Disputes Act, 1947 and rather the petitioner was engaged as casual labourer for seasonal work and for specific period. Accordingly, both these issues are decided in favour of the respondent and against the petitioner.

Issue No. 2.

18. Since, I have held under issues no.1 & 3 above that the services of the petitioner were not illegally terminated by the respondent whose services came to an end after completion of the NORAD Project which was foreign aided project, hence the petitioner is not entitled to any relief. Accordingly, the issue no.2 is decided in favour of respondent and against the petitioner.

Issue No. 4.

19. In support of his issue, no evidence was led by the respondent being the legal issues nor it was pressed during the course of arguments. However, I find nothing wrong with this petition which is perfectly maintainable in the present form. Accordingly, issue no.4 is decided in favour of the petitioner and against the respondent.

RELIEF

As a sequel to my above discussion and findings on issues no.1 to 4, the claim of the petitioner fails and is hereby dismissed and the reference is ordered to be answered in negative. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced in the open court today on this day of 29th July, 2009 in the presence of parties.

By order,
J. S. MAHANTAN,
Presiding Judge

**IN THE COURT OF JAGMOHAN SINGH MAHANTAN, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT, SHIMLA**

Ref no. 24 of 2007.
Instituted on. 19.3.2007
Decided on. 29.7.2009.

Bishamber Singh S/o Shri Hazari Nand, R/o Village Nasari, P.O Summerkot, Tehsil Rohru District Shimla,
HP. ...Petitioner.

Vs.

1. The Assistant Engineer, (B&R) Sub Division, HPPWD, Rohru, District Shimla, HP.
2. The Assistant Engineer, (B&R) Sub Division, HPPWD, Taklech, Tehsil Rampur Bushahr, District Shimla, HP. ...Respondent.

Reference under Section 10 of the Industrial Disputes Act, 1947.

For petitioner: Shri Prem Singh Negi, Ld. Csl.
For respondent: Shri Jagdish Kanwar, Ld. DDA.

AWARD

1. The following reference has been received from appropriate government by this court for adjudication:

“Whether the termination of the services of Shri Bishamber Singh S/o Shri Hazari Nand workman by the (1) Assistant Engineer, (B&R) Sub division, HPPWD, Rohru District Shimla HP (2) Assistant Engineer, (B&R) Sub division, HPPWD, Taklech, Tehsil Rampur Bushahr, District Shimla HP w.e.f. March, 2003 without complying the provisions of the Industrial Disputes Act, 1947 is proper and justified? If not, what relief of service benefits and amount of compensation, the above aggrieved workman is entitled to?”

2. The petitioner has filed a statement of claim asserting therein that the petitioner is a matriculate, who was engaged as mason by the respondent on 1.5.1998, who discharged his duties as mason on daily wages basis, who had worked for more than 240 days with the respondent and that in the month of Feb. 2000, the respondents verbally terminated the services of the petitioner without any reason. The petitioner requested for his reengagement but his services were not reengaged by the respondent and that in the year 2003, the petitioner had made elaborate enquiry and had come to know that the respondents had work and funds available with them but the petitioner was not called back and then the petitioner approached the Labour-cum-Conciliation Officer, Shimla and then the case has been forwarded to this Court and that while terminating the services of the petitioner, the respondents have not issued any notice under section 25F of the Act nor any compensation was paid to the petitioner and that the respondents have no powers to terminate the services of the petitioner as the work and funds are available with the respondent and that the respondents have failed to reengage the petitioner despite requests and representations and the respondents have engaged new persons in place of the petitioner and no written orders for terminating the services of the petitioner was issued by the respondent and the respondent falls under the definition of an Industry as defined under the Industrial Disputes Act, 1947 and as such prayed for reinstatement from Feb. 2000 with all consequential benefits, hence this claim duly supported by an affidavit.

3. The respondent no.1 resisted and contested the claim of the petitioner, which filed separate reply inter alia contending that the petitioner had worked as mason/beldar under HPPWD, Rohru Sub Division w.e.f. 7/1998 to 3/1999, who worked for 31 days in 7/98, 30 days in 9/98, 31 days in 10/98, 26 days in 11/98, 31 days in 12/98, 14 days in 2/99 and 21 3/1999 and as such the petitioner had worked for 149 days in 1998 and 35 days in 1999, hence the claim the petitioner that he had worked for more than 240 days in any year is baseless. It is denied that the services of the petitioner had terminated by the respondent, who himself did not turn up for his duty for the reasons best known to him and that the petitioner had never approached the office for reengagement in duty and that the petitioner was not assured

by anyone that he would be reengaged on duty as and when work and funds would be available with the respondent and as such prayed for the dismissal of the claim petition.

4. Respondent no.2 also resisted and contested the claim of the petitioner which filed separate reply inter alia raising preliminary objections of maintainability as the petitioner had not completed 240 working days in any calendar year, hence the provisions of Industrial disputes Act are not applicable and that the petitioner left the job of his own sweet will without informing the department and that the department is not an Industry within the provisions of Industrial Disputes Act and that the petitioner is debarred from claiming the benefits on account of his act and conduct. On merits, it is denied that the petitioner was engaged as mason, who was engaged as beldar and mate on daily wages, who had never completed 240 days in any calendar year from 1998 to 2000 and that the petitioner left the job of his own and that the petitioner did not remain regular at the site of work, who was not regular and failed to complete 240 days in a calendar year and as such prayed for the dismissal of the claim.

5. In the rejoinders, the petitioner controverted the assertions made in the replies and reiterated and reaffirmed the averments of the petition.

6. The following issues were framed by this court on 4.12.2007 on the pleadings of the parties.

1. Whether the service of the petitioner has been illegally terminated by the respondent without complying the provisions of I.D Act, 1947? If so, its effect? ...OPP.
2. If issue no.1 is proved in affirmative, to what relief the petitioner is entitled to? ...OPP.
3. Whether the present petition is not maintainable as the petitioner has not completed the required 240 days in each calendar year? If so, its effect? ...OPR
4. Whether the department is not an industry? If so, its effect? ...OPR.
5. Relief.

7. I have heard the Ld. Counsel for petitioner and Ld. DDA for respondent and have gone through the record of the case.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings on the aforesaid issues are as under:

Issue no.1	No.
Issue no.2	Not entitled to any relief.
Issue no.3	Yes.
Issue no.4.	No.
Relief.	Reference answered in negative per operative part of award.

REASONS FOR FINDINGS.

Issue No.1 & 3.

9. Both these issues are taken up and discussed together being co-related and interconnected for sake of convenience and to avoid repetition. Coming to these issues, the petitioner has examined two PWs in all. Petitioner Bishamber Singh appeared into the dock as PW-1, who has stated that he was engaged as mason/mate on daily wages by the respondents on 1.5.1998 and worked as such till Feb. 2000 with fictional breaks and after that he was not called by the respondent to join further service and then he filed the demand notice before the Labour-cum-Conciliation officer, Shimla where by the conciliation officer tried to reconcile the case but the respondents refused to reengage him, who had worked for more than 240 days in a calendar year. No notice nor any compensation was paid to him by the department at the time of his illegal removal and as such prayed that he be reinstated in service with seniority and continuity alongwith full back wages. He is not gainfully employed anywhere after his termination and he approached the respondents many times to reengage him but he was not reengaged.

10. PW-2 Shri Ram Swaroop has stated that he has been posted as Senior Assistant HPPWD Rampur Division Rampur since 19.10.2007 and is well conversant with the facts of the case. The petitioner was engaged by the respondent on 1.5.1998 as per muster roll as Chowkidar and proved the copy of muster roll Ex. PA.

11. To rebut the case of the petitioner, the respondent has examined RW-1 Er. Gopal Singh Negi, who has stated that he has been posted as an Assistant Engineer, HPPWD Taklech since March, 2007 and is well conversant with the facts of the case. The petitioner was engaged as daily wages beldar in May, 1998, who continued as such till

8.1998, who was reengaged from 6/1999 to 11/1999, who was again engaged in Jan. 2000 and worked till Feb. 2000 and then the petitioner abandoned the job of his own despite having sufficient work for petitioner with the department, who had not completed 240 working days in any calendar year preceding his termination. No junior to the petitioner was engaged nor continuing with the respondent and the claim of the petitioner is false.

12. The case of the petitioner is that he being the daily wages mason/mate having been completed 240 working days in each calendar year and also in twelve calendar months preceding his termination was illegally terminated from service without any reason and no notice nor compensation was paid to him at the time of his removal and as such he is also entitled to reinstatement with all consequential benefits.

13. On the contrary, the respondents contend that the petitioner had worked as mate/chowkidar/beldar from time to time, who was never terminated from service by the respondent, who left the job of his own without intimation to the department and even the petitioner had not completed 240 working days in any calendar year preceding his abandonment, hence the petitioner is not entitled to any relief as prayed by him.

14. I have considered the respective contentions of both the parties and have scrutinized the record of the case.

15. After the close scrutiny of the record of the case, it remains a fact that the petitioner was engaged as daily wages Chowkidar from 5/98, who worked for 31 days as Chowkidar and then he worked as beldar from 6/98 to 8/98 for 61 days and then the petitioner worked as mate w.e.f. 6/99 to 11/99 for 151 days and thereafter he worked as beldar/mate w.e.f. 1/2000 to 2/000 for 24 days as is evident from the mandays chart Ex. PA placed on record. No doubt, the petitioner has tried to establish on record that he had put in more than 240 working days of continuous service with the respondents in each and every calendar year but there is nothing on record which could show that the petitioner had worked with the respondents for more than 240 days in each calendar year and also in twelve calendar months preceding his termination. Since the petitioner has failed to prove on record that he had put in 240 working days in twelve calendar months preceding his termination and further more even if the working days of Rampur and Takleh Sub Divisions be taken into consideration even then the petitioner has not completed 240 working days in twelve calendar months preceding his termination as required under section 25F of the Industrial Disputes Act, 1947, hence the case of the petitioner does not fall under section 25-F of the Act. Moreover, it is well settled that where the workman has not produced any evidence to show that he had worked for more than 240 working days in twelve calendar months preceding his termination and that no evidence has been led in order to show that his juniors are still working with the respondent, the petitioner is not entitled to any protection under the provisions of the Industrial Disputes Act, 1947. Here I am fortified with a view taken by their lordship of Hon'ble Supreme Court in **AIR 2006 S.C. 110 case titled as Surindernagar District Panchyat V/s Dayabhai Amar Singh** in which it was held that:-

“Incase workman claims to have worked for more than 10 years as daily wager. Apart from oral evidence workman has not produced any evidence to prove fact that he has worked for 240 days. No proof of receipt of salary or wages or any record or order in that regard was produced; no co-worker was examined; muster roll produced by employer has not been contradicted. Workman has failed to discharge his burden that he was in employment for 240 days during preceding 12 months of date of termination of his service. Workman not entitled for protection of Section 25-F before his service was terminated.”

16. Now, adverting to the other aspect of the case, the petitioner has also tried to establish on record that his juniors are still continuing with the respondents department but he did not prove on record that on which date they joined the department and infact they are the juniors to the petitioner. On the other hand, the respondents have proved on record that no junior to the petitioner is still continuing with the respondent and therefore, the case of petitioner cannot be accepted for his reinstatement under section 25G & 25H of the Industrial Disputes Act, 1947 for want of evidence on this point.

17. Besides it, the respondents also tried to establish on record that the petitioner had left the job of his own but there is nothing on record which could go to show that the petitioner himself is responsible for loosing his job. Moreover, it is well settled in **State of HP & Others Vs. Bhatag Ram & Another as reported in latest HLJ 2007 (HP) 903** in which it was held that:-

“Plea of abandonment of job- merely raising the plea of abandonment is nothing but has to be established on the basis of facts. No facts led to substantiate the plea.”

18. Thus, on the strength of the above cited rulings and having regard to the evidence on record, it can safely be concluded that the services of the petitioner have not been illegally terminated by the respondent without complying the provisions of Industrial Disputes Act, 1947 especially when the petitioner had failed to prove on record that he had completed 240 working days in twelve calendar months preceding his termination. Accordingly, both these issues are decided in favour of the respondents and against the petitioner.

Issue No. 2.

19. Since I have held under issue no. 1 & 3 above that the services of petitioner have not been terminated wrongly and illegally by the respondent under the provisions of Industrial Disputes Act, 1947, hence the petitioner is not entitled to any claim of service benefits. Accordingly, issue no.2 is decided in favour of the respondent and against the petitioner.

Issue No. 4

20. In support of this issue, no evidence was led by the respondent being the legal issue. However, I find no force in this contention as it was held by the **Full Bench of Hon'ble Supreme Court reported in 1978 (2) SCC 213** in which it was held that the educational institute and research centres are Industries. It was further held by the Hon'ble Supreme Court in case titled **Banglore Water Supply and Sewerage Board Vs. A. Rajappa as reported in 1978 Vol-1 LLJ-349** in which it was held that a University is an Industry particularly with respect to small workers like Mali, Chowkidars, Carpenters etc. and as such on the strength of these judgments, it can safely be concluded that the respondent department is an Industry and governed by the Industrial Disputes Act, 1947 in the case of daily wagers. Accordingly, issue no.4 is decided in favour of petitioner and against the respondents.

RELIEF

As a sequel to my above discussion and findings on issues no.1 to 4, the claim of the petitioner fails and is hereby dismissed and the reference is ordered to be answered in negative. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced in the open court today on this day of 29th July, 2009 in the presence of parties counsels.

By order,
J. S. MAHANTAN,
Presiding Judge

IN THE COURT OF JAGMOHAN SINGH MAHANTAN, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL- CUM-LABOUR COURT, SHIMLA

Ref no. 32 of 2007.
Instituted on. 5.6.2007
Decided on. 29.7.2009.

Kabul Singh S/o Shri Mehar Lal R/o Village Khillian, Tehsil Nalagarh District Solan, HP. ...Petitioner.

Vs.

The Executive Engineer, I&PH Division, Nalagarh, District Solan, HP. ...Respondent.

Reference under Section 10 of the Industrial Disputes Act, 1947.

For petitioner: Shri Naveen K Bhardwaj, Ld. Csl.
For respondent: Shri Jagdish Kanwar, Ld. DDA.

AWARD

1. The following reference has been received from appropriate government by this court for adjudication:

“Whether the termination of the services of Shri Kabul Singh S/o Shri Mehar Lal workman by the Executive Engineer, IPH Division Nalagarh District Solan, HP w.e.f. December, 1999 without complying the provisions of the Industrial Disputes Act, 1947 is proper and justified? If not, what relief of service benefits and amount of compensation, the above aggrieved workman is entitled to?”

2. The petitioner has filed a statement of claim asserting therein that he was initially engaged as beldar on daily wages basis by the respondent w.e.f. May, 1996, who worked till 1.9.1998 and then the services of the petitioner were illegally terminated without complying with the provisions of Industrial Disputes Act, 1947 and that the petitioner has been in continuous service of the respondent for more than one year, who had completed more than 240 days prior to the retrenchment and that the petitioner filed an original application before the Administrative Tribunal which

ordered the reengagement of the petitioner in which the period between his disengagement and reengagement was directed to be counted towards his seniority and that the petitioner joined the duty and surprisingly again the services of the petitioner were terminated which is illegal and wrong and great injustice has been done to the petitioner and that the petitioner falls under the definition of workman as defined under section 25 of the Industrial Disputes Act and with the revengeful attitude, the respondent again terminated the services of the petitioner, hence the retrenchment of the petitioner is illegal, arbitrary, unjust as the petitioner has completed 240 days in twelve calendar months preceding his termination and that the respondent department has retained the juniors to the petitioner in service and as such prayed for reinstatement with all consequential benefits, hence this claim duly supported by an affidavit.

3. The respondent resisted and contested the claim of the petitioner, which filed reply interalia raising preliminary objections of maintainability and that the case of the petitioner does not fulfil the codal requirement of provisions of the Industrial Disputes Act, 1947 as the petitioner was engaged as casual surveyor on daily wages basis w.e.f. 15.7.1997, who worked intermittently for 159 days during the year 1997, 183 days in 1998 and 122 days in 1999 which is less than the minimum requirement of 240 days in each calendar year, hence the provisions of section 25F are not attracted and that one month notice and due compensation was given to the petitioner before his termination and that the petition is barred by time. On merits, it is contended that the petitioner was engaged as a surveyor on daily wages basis for the survey work of few schemes w.e.f. 15.7.1997 to 31.7.1998 and 1.9.1999 to 31.12.1999 according to the requirement of survey work. It is denied that the petitioner has completed 240 working days in each calendar year preceding his termination and that the petitioner was engaged without the prior approval of Finance Department as well as on the completion of work due to paucity of funds, the services of the petitioner were terminated, who challenged the termination order before the Administrative Tribunal which was set aside and the petitioner was reengaged w.e.f. 1.9.1999, who continued as such till 31.12.1999 and that the services of the petitioner were terminated with the provisions of law. It is also contended that no juniors to the petitioner were retained in service and the petitioner was junior most surveyor, hence his services were retrenched on the principle of last come first go and under the provisions of Industrial Disputes Act, 1947 and as such prayed for the dismissal of the claim.

4. In the rejoinder, the petitioner controverted the assertions made in the reply and reiterated and reaffirmed the averments of the petition.

5. The following issues were framed by this court on 25.7.2008 on the pleadings of the parties.

1. Whether the termination of Shri Kabul Singh petitioner w.e.f. December, 1999 without complying the provisions of Industrial Disputes Act, 1947 is improper and unjustified as alleged? ...OPP.
2. If issue no.1 is proved in affirmative, to what relief the petitioner is entitled to and since when? ...OPP.
3. Whether the present petition is not maintainable? ...OPR.
4. Whether the petition is hopelessly time barred? ...OPR.
5. Relief.

6. I have heard the Ld. Counsel for petitioner and Ld. DDA for respondent and have gone through the record of the case.

7. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings on the aforesaid issues are as under:

Issue no.1	No.
Issue no.2	Not entitled to any relief.
Issue no.3	No.
Issue no.4.	No.
Relief.	Reference answered in negative per operative part of award.

REASONS FOR FINDINGS

Issue No. 1.

8. Coming to this issue, the petitioner has examined himself as PW-1, who has stated that he was engaged as Surveyor on daily wages with XEN IPH, Nalagarh from May, 1996 and worked as such till 1.9.1999 and then he was terminated from service without notice and a compensation of Rs. 1,640/- was paid to him by the respondent, who

approached the Administrative Tribunal and on the interim direction of the Tribunal, he was reengaged by the respondent on 23.8.1999, who was terminated after three months by giving notice, who was terminated from service without complying with the provisions of I.D Act, who had completed 240 working days in every calendar year preceding his termination and as such prayed for reinstatement in service with seniority and back wages.

9. To rebut the case of the petitioner, the respondent has examined RW-1 Er. Rattan Lal, AAE, IPH Nalagarh, who has stated that he has been posted at Nalagarh since August, 2006 and is well conversant with the facts of the case. The petitioner was engaged on 15.7.1997 and continued as such till 31.7.1998. The work was completed on 31.7.1998, hence the services of the petitioner were not required and on 1.9.1999, he was reengaged by the orders of Administrative Tribunal, who continued as such till 14.12.1999 and then the services of the petitioner were terminated after giving notice and compensation vide Ex. RB and receipt Ex. RC and proved the mandays chart of the petitioner Ex. RD. The petitioner had put in 122 days in the year 1999, who had never completed 240 working days in any calendar year and no junior to the petitioner was ever engaged by the respondent and the services of the petitioner were terminated in accordance with law and procedure.

10. The case of the petitioner is that he being the daily wages Surveyor having completed 240 working days in each calendar year and also in twelve calendar months preceding his termination was illegally terminated from service without any reason and no notice nor compensation was paid to him at the time of his removal and even juniors to him are still continuing with the respondent and as such he is also entitled for reinstatement with all consequential benefits.

11. On the contrary, the respondent contends that the petitioner was engaged against specific work and for specific period whose services automatically came to an end after the completion of the work, hence the petitioner is not entitled to any relief as prayed by him.

12. I have considered the respective contentions of both the parties and have scrutinized the record of the case.

13. After the close scrutiny of the record of the case, it remains a fact that the petitioner was engaged as daily wages Surveyor by the respondent in the year 1997, who worked for 159 days in 1997, 183 days in 1998 and 122 days in the year 1999 as is evident from mandays chart Ex. RD placed on record. It is also proved on record that the services of the petitioner were terminated after serving notice Ex. RA and compensation of Rs. 1,640/- as is evident from Ex. RA placed on record and the compensation of Rs. 1640/- was duly received by the petitioner vide Ex. RC. No doubt that the petitioner has tried to establish on record that he had put in more than 240 working days of continuous service with the respondent in each and every calendar year but there is nothing on record which could show that the petitioner had worked with the respondent for more than 240 days in each calendar year and also in twelve calendar months preceding his termination. Since the petitioner has failed to prove on record that he had put in 240 working days in twelve calendar months preceding his termination, hence the case of the petitioner does not fall under section 25-F of the Act. Moreover, it is well settled that where the workman has not produced any evidence to show that he had worked for more than 240 working days in twelve calendar months preceding his termination and that no evidence has been led in order to show that his juniors are still working with the respondent, the petitioner is not entitled to any protection under the provisions of the Industrial Disputes Act, 1947. Here I am fortified with a view taken by their lordship of Hon'ble Supreme Court in *AIR 2006 S.C. 110 case titled as Surindernagar District Panchyat V/s Dayabhai Amar Singh* in which it was held that:-

“Incase workman claims to have worked for more than 10 years as daily wager. Apart from oral evidence workman has not produced any evidence to prove fact that he has worked for 240 days. No proof of receipt of salary or wages or any record or order in that regard was produced: no co-worker was examined; muster roll produced by employer has not been contradicted. Workman has failed to discharge his burden that he was in employment for 240 days during preceding 12 months of date of termination of his service. Workman not entitled for protection of Section 25-F before his service was terminated.”

14. In the instant case, the respondent has complied with the provisions of section 25F of the Industrial Disputes Act, 1947 as one month notice and compensation was paid to the him at the time of his termination as is evident from Ex RA placed on record and as such it does not lie in the mouth of the petitioner to say that he was illegally terminated by the respondent without complying with the provisions of Industrial disputes Act, 1947.

15. Now, turning to the other aspect of the case, it is also proved on record that the petitioner was engaged according to the need of work under various schemes which was purely seasonal work which was provided to the petitioner on the availability of the work and funds as daily wages Surveyor, hence the services of the petitioner stood

automatically dispensed with. Moreover, it is well settled in (2006) 6 SCC 221, case titled as *Reserve Bank of India V. Gopinath Sharma & Anr.* in which it was held that:-

“Workman not appointed to any regular post but engaged on the basis of need of work on day to day basis, held, had no right to the post.”

16. Similarly in 2006 (2) SCC 794 in case titled as *Haryana State Agricultural Marketing Board V. Subhash Chand & Anr.* in which it was held that:-

“If nature of service does not come within purview of definition of retrenchment in section 2(oo), question of applicability of section 25-G does not arise. Bare perusal of offer of appointment (set out in para 2 herein) clearly shows that respondent was appointed on seasonal contracts. Hence, respondent not having been reengaged on expiry thereof, he was not retrenched within meaning of section 2(oo), and his case fell exception in section 2(oo)(bb). Hence, section 25-G was inapplicable in his case and dispensing with engagement of respondent cannot be said to be unwarranted in law.”

17. Apart from it, it was further held in case titled as *Punjab State Electricity Board V. Darbara Singh reported in 2006 LLR 68 SC.* and in case titled as *Municipal Council Samrala V. Surhwinder Kaur reported in 2006 LLR 1009 SC.* In which it was held that:-

“Material on record established that engagement of workman was for specific period and as such his termination will be excluded as per the provisions of section 2(oo)(bb) of the I.D Act and hence, no retrenchment compensation will be payable on his termination even when he has worked for more than 240 days in the preceding 12 calendar months.”

18. Now, advertent to the other aspect of the case, the petitioner also tried to establish on record that his juniors are still continuing with the respondent department but he has not proved on record that on which date they joined the department and infact they are the juniors to the petitioner. On the other hand, the respondent has proved on record that the petitioner was engaged for specific work and for specific time as per the need of the work under special schemes and as such it does not lie in the mouth of petitioner to claim any right over the post which was offered to him for specific period and for specific work and therefore, the case of petitioner cannot be accepted for his reinstatement keeping in view the entire facts and circumstances of the case.

19. Thus, on the strength of the above cited rulings and having regard to the evidence on record, it can safely be concluded that the termination of Shri Kabul Singh petitioner w.e.f. December, 1999 without complying the provisions of Industrial Disputes Act, 1947 is proper and justified. Accordingly issue no.1 is decided in favour of respondent and against the petitioner.

Issue No. 2.

20. Since I have held under issue no. 1 above that the services of petitioner has not been terminated wrongly and illegally by the respondent under the provisions of Industrial Disputes Act, 1947, hence the petitioner is not entitled to any claim of service benefits. Accordingly, issue no.2 is decided in favour of the respondent and against the petitioner.

Issue No. 3

21. In support of this issue, no evidence was led by the respondents nor it was pressed during the course of arguments. However, I find nothing wrong with this petition which is perfectly maintainable in the present form. Accordingly, issue no.3 is decided in favour of the petitioner and against the respondent.

Issue No. 4

22. In support of this issue, no evidence was led by the respondents. However I have scrutinized the record of the case and observed that there is no limitation under the Industrial Disputes Act, 1947 as it was held by their lordship of *Hon'ble Supreme Court reported in (1999) 6 SCC 82 case titled as Ajayab Singh Vs. Sirhind Co-operative Marketing –cum- processing Service Society Limited and Another* in which it was held that:-

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”

Accordingly, on the strength of this ruling, it can safely be concluded that there is no limitation under the Industrial Disputes Act, 1947 and as such the petition is not barred by time. Accordingly, issue no.4 is decided in favour of the petitioner and against the respondent.

RELIEF

As a sequel to my above discussion and findings on issues no.1 to 4, the claim of the petitioner fails and is hereby dismissed and the reference is ordered to be answered in negative. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced in the open court today on this day of 29th July, 2009 in the presence of parties counsels.

By order,
J. S. MAHANTAN,
Presiding Judge.

**IN THE COURT OF JAGMOHAN SINGH MAHANTAN, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT, SHIMLA**

Ref.109 of 2007
29.7.2009

Sh Hari Singh

V/s

M.D.Him Tech.Forge Baddi.

Present:-None.

It is 3.35 P.M. Case is called out in the pre and post lunch sessions but none appeared on behalf of the parties. It seems that the parties are not interested to pursue this case, hence the claim of the petitioner is dismissed in default and the reference is ordered to be answered accordingly. Let a copy of this order be sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced:-
29.7.2009

By order,
Sd/-
Presiding Judge.

**IN THE COURT OF JAGMOHAN SINGH MAHANTAN, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT, SHIMLA**

Ref No. 78 of 2002.
Instituted on. 4. 8.2002
Decided on. 30.7.2009.

M.C Guleria, R/o C-5, Kailash Vihar Baddi, District Solan HP.

...Petitioner.

Vs.

M/s Usha Telehoist Ltd. SCO 53 (IInd Floor) Sector-26, Madhymarg Chandigarh-160019.

...Respondent.

Reference under Section 10 of the Industrial Disputes Act, 1947.

For petitioner: Shri B.L Lakhanpal, Ld. AR

For respondent: Already exparte.

AWARD.

1. The following reference has been received from appropriate government by this court for adjudication:

“Whether the transfer of Mr. M.C Guleria, workman being a President of registered trade union by M/s Usha Telehost Ltd. Village Jharmajari, Pargana Dharampur, District Solan is case of victimization? If yes, what relief and service benefits Mr. M.C Guleria workman is entitled to from the management?”

2. The petitioner has filed a statement of claim asserting therein that the respondent concern is a factory duly registered under factories Act, 1948 and that the petitioner joined the establishment of the respondent at Jharmajari on 6.2.1995 as trainee and after appraisal of his work, he was confirmed as Supervisor (Inspection) w.e.f. 6.2.1996 and that the basic pay was allowed @ Rs. 1380/- per month + allowances and gross wages were around Rs. 2600/- per month and that after availing the legitimate rights, the workers of the respondent establishment formed their trade union during Jan. 1999 under the name and style of M/s Usha Telehost Karmachari Sangh which was registered by the HP Government under Trade Unions Act, 1926 vide registration no. 860 and that the management became hostile to the active office bearers and constituents of the union and resorted to all sort of harassment by all means with malafide intention and that as per the provisions of the law and rules, the union submitted the list of its protected workmen to the respondent on 8.5.1999 and that the top office bearers of the union were transferred and posted at far away stations outside the state of HP with malafide intention and in contravention to laws and rules and the petitioner being active President of the union was transferred from Jharmajri to Hosur (Tamil Nadu) on 2.7.1999 to disrupt the activities of the union which is a clear case of victimization and unfair labour practice which was objected by the union but of no use and that the petitioner has been victimized due to his trade union activities as a Chief Executive (President) of the union by issuing his unfair and improper transfer orders just to terminate his services and that there was no proper handling of service conditions of the workers by the respondent management and the matter was under consideration with the Labour Inspector-cum-Conciliation Officer and that several demands/requests of the petitioner and the union for reinstatement at Jharmajri remained unattended to by the respondent management and as such prayed that the action of the respondent be ordered as illegal which is liable to be set aside, reinstatement with full back wages, continuity of service and all consequential benefits with interest @ 18%, hence this claim.

3. The respondents resisted and contested the claim of the petitioner, which filed reply interalia contending that the factory concerned of the respondent company has since been closed due to non cooperation and illegal strike which was done by the petitioner in connivance with other co-workers and as such the respondent had no other option except to close down its unit at Jharmajri and that the petitioner from the very inception of joining of his duties is in the habit of absenting himself from his duties for which the petitioner has been warned so many times by the respondent management and has also been chargesheeted but the petitioner never tried to improve. It is also contended that as per the terms and conditions of the appointment letter of the petitioner, the respondent has full powers to transfer the petitioner from its one unit to other unit. It is denied that the petitioner alongwith other office bearers of the union are protected workmen. It is also contended that the petitioner was rightly transferred as per the terms and conditions of the appointment letter and as per the standing orders and that there is no unfair labour practice in the factory premises of the respondent company and that the petitioner was not interested to do his job, who had not joined after the lapse of two years of his transfer and that the petitioner never made request except once, who was asked to join his new place of posting failing which disciplinary action would be taken against him but the petitioner never showed any interest to join his duties, hence the chargesheet was framed against the petitioner on 6.6.2000 but no reply or explanation has been put forth by the petitioner. Since the unit at Jharmajri has been closed, hence there is no question of reinstatement of the petitioner at Jharmajri and as such prayed for the dismissal of the claim.

4. In the rejoinder, the petitioner controverted the assertions made in the reply and reiterated and reaffirmed the averments of the petition.

5. The following issues were framed by this court on 6.5.2004 on the pleadings of the parties.

1. Whether the transfer of M.C Guleria, petitioner by the respondent is a case of victimization?
...OPP.
2. If issue no.1 is proved in affirmative, to what relief and service benefits, the petitioner is entitled to?
...OPP.
3. Relief.

6. It is not out of place to mention here that the respondent was proceed against exparte on 3.7.2006 and then application was moved by the respondent to set aside the exparte order passed against the respondent which was allowed on 19.5.2007 but again the respondent did not put in appearance on 27.8.2007, hence proceeded against exparte.

7. I have heard the Ld. AR for the petitioner and have gone through the record of the case.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings on the aforesaid issues are as under:

Issue no.1 Yes.

Issue no.2 Entitled to compensation to the tune of Rs. 50,000/- per operative part of award.

Relief. Reference answered in affirmative per operative part of award.

REASONS FOR FINDINGS.

Issue No. 1.

9. Coming to this issue, the petitioner in his exparte evidence examined himself as PW-1, who has stated on oath the he was appointed as management trainee by the respondent during Feb. 1995 as per letter Ex. PA, who was confirmed as per letter Ex. PB, who was having no administrative powers, who remained in service till July, 1999 under the respondent and then he was transferred to Tamilnadu as per transfer letter Ex. PC alongwith other persons, who had not gone to Tamilnadu and requested the management that he be retained at Jharmajri but his request was not considered. At the time of his transfer, the dispute of the union was pending as per conciliation letter Ex. PD, who has not left the job of his own. No enquiry was conducted against him and his transfer is malafide, who was shifted being the office bearer of the union as President and all the office bearers of the union were transferred as per list Ex. PE, hence prayed that his petition be allowed.

10. Shri B.L Lakhanpal, Ld. AR for petitioner has vehemently argued at the very out set that the petitioner was illegally transferred by the respondent company, who was thrown out to Tamilnadu at Hosur being the President of the union alongwith other workers of the company which is totally illegal and a clear case of victimization of the labourers which amounts to unfair labour practice, hence he is entitled to be reinstated in service with seniority, continuity and back wages alongwith all consequential benefits.

11. I have considered the respective contentions of both the parties and have scrutinized the record of the case.

12. In view of unrebutted exparte evidence on record, I am satisfied that the petitioner was on the roll of the respondent company initially as management trainee in Feb. 1995 as per letter Ex. PA, who was confirmed vide letter Ex. PB and continued as such till July, 1999 and then he was transferred to Hosur in Tamilnadu State vide transfer letter Ex. PC alongwith other office bearers of the union. He did not go to Hosur and requested the management to retain him at Jharmajri but his request was turned down. The dispute of union was pending at the time of his transfer and was on conciliation as is evident from conciliation letter Ex. PD. The petitioner has also proved on record that he was the President of the Workmen Union of the respondent company, who did not leave the job of his own but he was shifted from Jharmajri being the President of the union and his transfer was malafide, who was intentionally transferred to the State of Tamilnadu and all the office bearers of the union were transferred as per list Ex. PE. It is borne out from the exparte evidence on record that the respondent management shifted the entire office bearers of the petitioner union in order to harass and to teach them a lesson which is also the clear cut case of victimization which amounts to unfair labour practice and obviously therefore, I have no hesitation in coming to the conclusion that the transfer of Shri M.C Guleria, petitioner being the President of workers union is a clear case of victimization. Accordingly, the issue no.1 is decided in favour of petitioner and against the respondent.

Issue No. 2

13. Since I have held under issue no.1 above that the transfer of M.C Guleria petitioner being the President of the workers union is a clear case of victimization, who was shifted from Jharmajri to Tamilnadu in order to harass and victimize him. Since it has come on record that the respondent company has closed his unit at Jharmajri, hence the petitioner is entitled to lump sum compensation of Rs. 50,000/- (Fifty Thousand only) under these circumstances. Accordingly, issue no.2 is decided in favour of the petitioner and against the respondent.

RELIEF

14. As a sequel to my above discussion and findings on issues no.1 & 2, the claim of the petitioner succeeds and the petitioner is ordered to be granted a lump sum compensation of Rs. 50,000/- (Fifty Thousand only) which shall be paid to the petitioner by the respondent forthwith and as such the reference is ordered to be answered in affirmative. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced in the open court today on this day of 30th July, 2009 in the presence of parties.

By order,
Sd/-
Presiding Judge.

**IN THE COURT OF SHRI JAGMOHAN SINGH MAHANTAN, PRESIDING JUDGE, INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Ref No. 89 of 2001
Instituted on 16-5-2001.
Decided on 9-7-2009.

Kamal Kumar s/o Shri Sansar Singh, r/o Village Bankala, P.O. Shambuwalla, Tehsil Nahan, District Sirmour,
(H.P.) ...Petitioner.

Vs.

The Executive Engineer, HPSEB(E) Division, Nahan, District Sirmour (H.P.) ...Respondent.

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner : Shri O. P. Sharma, Ld. Csl.
For respondent : Ms. Shilpa Sood, Ld. Csl..

AWARD

1. The following reference has been received from appropriate Government by this court for adjudication :

"Whether the plea of the Executive Engineer, HPSEB (E) Division Nahan that Shri Kamal Kumar s/o Shri Sansar Singh had left the job of his own accord after 20-3-1992 is justified? If not, what seniority, service benefit and relief Shri Kamal Kumar s/o Shri Sansar Singh is entitled to?"

2. The petitioner has filed a statement of claim asserting therein that he was serving as daily wages T-Mate under the respondent *w.e.f.* 1985 to 20-3-1992, who had completed 240 days of service as envisaged in the I. D. Act for the application of section 25 of the Act whose services have been dismissed without following the provisions of I. D. Act and also in violation of the standing orders of the Board, who was not given any notice nor any compensation was paid to him at the time of his disengagement and the principle of last come first go was also not followed and the persons junior to the petitioner are still working with the respondent, hence there is clear violation of section 25H of the Act and that the petitioner did not abandon the job of his own, who met with the concerned authorities many times regarding his grievances but to no avail and as such prayed for reinstatement in service with the benefits of seniority and back wages, hence this claim.

3. The respondent resisted and contested the claim of the petitioner, which filed reply *inter alia* raising preliminary objections of enforceable cause of action, want of better particulars, the claim is hit by the vice of delay and laches and estoppel. On merits, it is contended that the various works of respondent were being executed at different places under the Rural Electrification Programme and for these purposes, persons from adjoining villages were engaged on daily wages to carry out the job and the petitioner was one of such person, who was engaged on different occasions between the period from 23-1-1992 to 20-2-1992 and 21-2-1992 to 20-3-1992, who never reported for duty after 20-3-1992 whose services were never terminated but the petitioner left the job of his own, who was engaged for a specific piece of work and as such prayed for the dismissal of the claim.

4. No rejoinder filed. The following issues were framed by this court on 12-5-2006 on the pleadings of the parties :

1. Whether the petitioner abandoned his job after 20-3-1992 ? If so, its effect ? ...OPR
2. If issue No. 1 is not proved to what relief, the petitioner is entitled to ? ...OPP
3. Whether the present petition is not maintainable ? ...OPR
4. Relief.

5. I have heard the Ld. Counsels for the parties and have gone through the record of the case.

6. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings on the aforesaid issues are as under :

1. Issue No. 1 Yes
2. Issue No. 2 Not entitled to any relief
3. Issue No. 3 No
4. Relief. Reference answered in negative per operative part of award

REASONS FOR FINDINGS

Issue No. 1 :

7. Coming to this issue, the petitioner has examined himself as PW-1, who has stated that he was engaged by the respondent in the year 1987 and worked as such upto 3/1992 continuously, who had completed more than 240 days during each calendar year of his service and proved the copy of attendance Ex. PW-1/A and the other casual cards are Ex. PW-1/B to PW-1/H and the record shown by the respondent in its reply is not correct as he had worked continuously from 1987 till his retrenchment, who was not served with any notice, charged-sheet or retrenchment compensation at the time of his disengagement and the respondent used to give the fictional breaks in his service due to the non availability of work and he is not gainfully employed since his retrenchment. His juniors S/Shri Kesar, Girdhari Lal, Gian Chand, Gopi Ram etc. are still working with the respondent and many fresh hands have been engaged after the disengagement of his services, hence prayed for reinstatement in service alongwith all consequential benefits including back wages, seniority and continuity in service.

8. To rebut the case of the petitioner, the respondent has examined RW-1 Er. I. P. Singh, who has stated that he is posted as an Assistant Engineer, HPSEB Nahan since June 2006 and is well conversant with the facts of the case. The petitioner was engaged as beldar on daily wages *w.e.f.* 23-1-1992 to 20-3-1992 and then he left the job of his own, who was never terminated by the department, who had not completed 240 working days in a calendar year preceding his abandonment and proved the casual cards Ex. RA & RB of the petitioner.

9. The case of the petitioner is that he being the daily wages beldar having been completed 240 working days in each calendar year and also in twelve calendar months preceding his termination was illegally terminated from service without any reason and no notice nor compensation was paid to him at the time of his removal and even juniors to him are still continuing with the respondent and no notice under certified standing orders of HPSEB was given to the petitioner and as such he is also entitled for reinstatement with all consequential benefits.

10. On the contrary, the respondent contends that the petitioner was never terminated by the respondent at any point of time, who left the job of his own without intimation to his superiors, who had failed to put in 240 working days in preceding twelve calendar months from the date of his abandonment, hence no notice nor compensation is required to be given to the petitioner, hence the petitioner is not entitled to any relief as prayed by him.

11. I have considered the respective contentions of both the parties and have scrutinized the record of the case.

12. After the close scrutiny of the record of the case, the petitioner has tried to establish on record that he had put in more than 240 working days in many calendar year preceding his termination and also in preceding twelve calendar months but there is nothing on record which could show that the petitioner has completed 240 working days in twelve calendar months preceding his termination. On the other hand, the respondent has proved on record that the petitioner was engaged as daily paid labourer on 23-1-1992, who continued as such till 20-3-1992. No doubt, that the petitioner has tried to take the benefit of attendance register Ex. PW-1/A placed on record but the petitioner has failed to prove on record that who issued the attendance register to him nor the official who issued the attendance register to the petitioner was examined by the petitioner to show that he had put in 240 working days in twelve calendar months

preceding his termination, hence this contention is of no avail and is hereby rejected. Since the petitioner has failed to prove on record that he had put in 240 working days in twelve calendar months preceding his termination, hence the case of the petitioner does not fall under section 25-F of the Act. Moreover, it is well settled that where the workman has not produced any evidence to show that he had worked for more than 240 working days in twelve calendar months preceding his termination and that no evidence has been led in order to show that his juniors are still working with the respondent, the petitioner is not entitled to any protection under the provisions of the Industrial Disputes Act, 1947. Here I am fortified with a view taken by their lordship of Hon'ble Supreme Court in **AIR 2006 S.C. 110 case titled as Surindernagar District Panchayat v/s. Dayabhai Amar Singh** in which it was held that :—

"In case workman claims to have worked for more than 10 years as daily wager. Apart from oral evidence workman has not produced any evidence to prove fact that he has worked for 240 days. No proof of receipt of salary or wages or any record or order in that regard was produced: no co-worker was examined; muster roll produced by employer has not been contradicted. Workman has failed to discharge his burden that he was in employment for 240 days during preceding 12 months of date of termination of his service. Workman not entitled for protection of Section 25-F before his service was terminated."

13. It is also the case of the petitioner that the respondent has violated the provisions of Rule 14 (ii) of Standing Orders of HPSEB as no ten days notice was given to him before his termination. It is abundantly clear that no notice for ten days was required to be served upon the petitioner before the termination of the petitioner as it was held by our own High Court that no notice was required to be given to the petitioner by HPSEB even if the employment is below one year, as it was held in **Executive Engineer Jogindernagar & Sanju s/o Sh. Gantu Ram, Vill. Dalana, P.O. Ballhjoli, Tehsil Jogindernagar, Distt. Mandi H.P. & Presiding Officer, Labour Court-cum-Industrial Tribunal, Dharamshala in CWP No. 1383 of 2005** in which it was held that :—

"The H.P. State Electricity Board shall be exempted from all the provisions of Standing Orders Act, and thereafter no 10 days notice is required to be given under Standing Orders to the employee. Admittedly, the employees had not completed 240 days and the Tribunal could not have come to the rescue to the employee."

Thus having regard to the entire facts and circumstances of the case and on the strength of the above cited rulings, I have no hesitation in coming to the conclusion that the petitioner has not completed 240 working days in twelve calendar months preceding his termination nor his juniors are proved to be continuing in service after his removal and obviously, therefore, it can safely be concluded that the services of petitioner has not been terminated wrongly and illegally by the respondent without complying the provisions of Industrial Disputes Act, 1947, who himself is responsible for losing his job as the petitioner has failed to report for duty after his abandonment. Accordingly issue No. 1 is decided in favour of respondent and against the petitioner.

Issue No. 2 :

14. Since I have held under issue No. 1 above that the services of petitioner has not been terminated wrongly and illegally by the respondent under the provisions of Industrial Disputes Act, 1947 as well as under the provisions of rule 14 (ii) of Standing Order of HPSEB, who left the job of his own without any intimation to the respondent board, hence the petitioner is not entitled to any claim of service benefits. Accordingly issue No. 2 is decided in favour of respondent and against the petitioner.

Issue No. 3 :

15. In support of this issue, no evidence was led by the respondents nor it was pressed during the course of arguments. However, I find nothing wrong with this petition which is perfectly maintainable in the present form. Accordingly, issue No. 3 is decided in favour of the petitioner and against the respondent.

RELIEF

As a sequel to my above discussion and findings on issues No. 1 to 3, the claim of the petitioner fails and is hereby dismissed and the reference is ordered to be answered in negative. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced in the Open Court today on this day of 9th July, 2009 in the presence of parties counsels.

By order,
JAGMOHAN SINGH MAHANTAN,
Presiding Judge.

ब अदालत कार्यकारी दण्डाधिकारी, सुन्दरनगर, जिला मण्डी, हिमाचल प्रदेश

मुकद्दमा शीर्षक :

श्री हरी दत्त शर्मा पुत्र श्री जगेश्वर, निवासी पुरानानगर, तहसील सुन्दरनगर, जिला मण्डी (हि0 प्र0)
प्रार्थी ।

बनाम

आम जनता

प्रत्यार्थीगण ।

प्रार्थी श्री हरी दत्त शर्मा ने इस अदालत में दिनांक 19-8-2009 को प्रार्थना-पत्र दायर किया है कि गोविन्द राम पुत्र श्री कृष्ण चन्द, निवासी हन्डेटी (पुराना बाजार) तहसील सुन्दरनगर की मृत्यु दिनांक 6-7-2009 को हो चुकी है परन्तु मृत्यु तिथि का इन्द्राज नगर परिषद् के अभिलेख में न करवाया गया है। जिसे अब दर्ज करवाना चाहता है।

अतः आम जनता को इस इश्तहार के माध्यम से सूचित किया जाता है कि मृत्यु तिथि दर्ज करने बारा किसी को कोई उजर/एतराज हो तो वह दिनांक 30-9-2009 को इस अदालत में हाजिर आकर पेश कर सकता है। हाजर न आने की सूरत में एकतरफा कार्यवाही अमल में लाई जाएगी।

आज दिनांक 27-8-2009 को मेरे हस्ताक्षर व मोहर अदालत से जारी हुआ।

मोहर।

हस्ताक्षरित /—
कार्यकारी दण्डाधिकारी,
सुन्दरनगर, जिला मण्डी, हिमाचल प्रदेश।

ब अदालत कार्यकारी दण्डाधिकारी, सुन्दरनगर, जिला मण्डी, हिमाचल प्रदेश

मुकद्दमा शीर्षक :

चुक्की पुत्री श्री टश्शी दौरजें, निवासी भोजपुर, तहसील सुन्दरनगर, जिला मण्डी (हि0 प्र0)
प्रार्थीनी ।

बनाम

आम जनता

प्रत्यार्थीगण ।

जन्म तिथि दर्ज करने बारा।

प्रार्थीनी चुक्की ने इस अदालत में दिनांक 30-7-2009 को प्रार्थना-पत्र पेश किया है कि उसकी जन्म तिथि 1-1-1972 है परन्तु जन्म तिथि नगर परिषद् सुन्दरनगर के अभिलेख में दर्ज नहीं करवाई है। जिसे दर्ज करवाना चाहती है।

अतः आम जनता को इस इश्तहार के माध्यम से सूचित किया जाता है कि जन्म तिथि दर्ज करने बारा किसी को कोई उजर/एतराज हो तो वह दिनांक 30-9-2009 को इस अदालत में हाजिर आकर पेश कर सकता है। हाजर न आने की सूरत में एकतरफा कार्यवाही अमल में लाई जाएगी।

आज दिनांक 28-8-2009 को मेरे हस्ताक्षर व मोहर अदालत से जारी हुआ।

मोहर।

हस्ताक्षरित /—
कार्यकारी दण्डाधिकारी,
सुन्दरनगर, जिला मण्डी, हिमाचल प्रदेश।

ब अदालत कार्यकारी दण्डाधिकारी, सुन्दरनगर, जिला मण्डी, हिमाचल प्रदेश

मुकद्दमा शीर्षक :

भूपेन्द्र कुमार पुत्र श्री जसवीर सिंह, निवासी मकान नं० 1029-1030/एस.-0 बी०बी०एम०बी० कालोनी, सुन्दरनगर, जिला मण्डी (हि० प्र०) प्रार्थी।

बनाम

आम जनता

प्रत्यार्थीगण।

जन्म पंजीकरण बारा।

प्रार्थी श्री भूपेन्द्र कुमार ने दिनांक 25-2-2009 को इस न्यायालय में प्रार्थना-पत्र दायर किया है कि उसके पुत्र हर्ष कुमार की जन्म तिथि 21-12-2004 है परन्तु नाम व जन्म तारीख नगर परिषद् के अभिलेख में दर्ज नहीं करवाई है। जिसे अब दर्ज करवाना चाहता है।

अतः आम जनता को इस इशतहार के माध्यम से सूचित किया जाता है कि उक्त पंजीकरण बारा किसी को कोई उजर/एजराज हो तो वह दिनांक 30-9-2009 को इस अदालत में हाजिर आकर पेश कर सकता है। हाजर न आने की सूरत में एकतरफा कार्यवाही अमल में लाई जाएगी।

आज दिनांक 27-8-2009 को मेरे हस्ताक्षर व मोहर अदालत से जारी हुआ।

मोहर।

हस्ताक्षरित/—
कार्यकारी दण्डाधिकारी,
सुन्दरनगर, जिला मण्डी, हिमाचल प्रदेश।

**In the Court of Marriage Officer-cum-Sub-Divisional Magistrate, Sadar Mandi, District
Mandi, Himachal Pradesh**

In the matter of :

1. Dr. Vishal Thakur son of Shri D. D. Thakur, r/o H. No. 244/3, Palace Colony, Mandi Town, District Mandi (H. P.).
2. Dr. Richa Thakur d/o Dr. Prem Kumar, r/o H. No. 11/23, Shooter Ganj, Civil Lines, Kanpur, U. P. (At Present wife of Dr. Vishal Thakur son of Shri D. D. Thakur, r/o H. No. 244/3, Palace Colony, Mandi Town, District Mandi (H. P.) . . Applicants.

Versus

General Public

Subject.—Application for the registration of marriage under Section 15 of Special Marriage Act, 1954.

Dr. Vishal Thakur son of Shri D. D. Thakur, r/o H. No. 244/3, Palace Colony, Mandi Town, District Mandi (H. P.) and Dr. Richa Thakur d/o Dr. Prem Kumar, r/o H. No. 11/23, Shooter Ganj, Civil Lines, Kanpur, U. P. (At Present wife of Dr. Vishal Thakur son of Shri D. D. Thakur, r/o H. No. 244/3, Palace Colony, Mandi Town, District Mandi (H. P.) have filed an application

alongwith affidavits in the Court of undersigned under section 15 of Special Marriage Act, 1954 that they have solemnized their marriage on 8-12-2008 according to Hindu rites and customs at Hotel Rajmahal, Mandi Town, Distt. Mandi (H. P.) and they are living together as husband and wife since then, hence their marriage may be registered under Special Marriage Act, 1954.

Therefore, the general public is hereby informed through this notice that any person who has any objection regarding this marriage can file the objection personally or in writing before this court on or before 30th September, 2009 after that no objection will be entertained and marriage will be registered.

Issued today on 31st day of August, 2009 under my hand and seal of the court.

Seal.

Sd/-

*Marriage Officer-cum-Sub-Divisional Magistrate,
Sadar Mandi, District Mandi (H. P.).*

OFFICE OF THE DEPUTY COMMISSIONER, SHIMLA, DISTT. SHIMLA H.P.

NOTIFICATION

Shimla-1 theth September, 2009

No.SML-DEV. (Notary Public)/2005.—Wherea sh. Shiv Kumar Jagota, Smt. Anjana Mahindroo, Sh. Vijay Kumar Saklania, Sh. Naginder Singh Negi, Smt. Heera Chauhan, Sh. Surinder Chauhan, Sh. Parkash Singh Kalta, Smt. Pooja Sharma, Sh. Saroj Kumar Chauhan, Kumari Reeta Devi Thakur Sh. Dinesh Kumar Tegta, Sh Pankaj Chauhan, Sh. Chander Kumar Chauhan, Sh. Manmohan Singh Rawat, Kumari Monika Singh and Sh. Dula Ram Hasta Advocate(s) have submitted their applications for appointment as a Notary Public under Rule 4 of the Notaries Rules, 1956 at various places in Shimla District.

Therefore, I the undersigned in exercise of the powers vested in me vide Government of H.P. Notification No.LLR-107-323/56-II dated 27.9.77, hereby issue notice under rule 6 of the Notaries Rule 1956 for the information of all concerned for inviting objections if any, within fourteen days from the date of publication of this notification regarding appointment of the above mentioned Advocates as a Notary Public in Shimla District.

By order,

Sd/-

District Magistrate, Shimla.